THE CANADA-U.S.
FREE TRADE AGREEMENT

TRADE: Securing Canada's Future

Canada

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THE CANADA-U.S.

FREE TRADE AGREEMENT

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FREE TRADE AGREEMENT
BETWEEN CANADA
AND THE
UNITED STATES OF AMERICA

TEXT

EXPLANATORY NOTES

Canada-United States Trade Agreement

Overview

The Canada-United States Trade Agreement reproduced in these pages is the biggest trade agreement ever concluded between two countries. It covers more trade and more trade-related issues than any other trade agreement and breaks important new ground which will be of lasting value to the Canadian and US economies.

The Agreement sets a new standard for trade agreements concluded under the General Agreement on Tariffs and Trade (GATT). It takes various GATT commitments, bilateral arrangements and ad hoc understandings and transforms them into a treaty-based relationship between Canada and the United States which should govern the trade and economic relationship for the foreseeable future. The agreement meets the test of fairness and of mutual advantage. It is a win-win agreement.

Once in force, the Agreement will chart a new course for the largest and most important trading relationship in the world. As a result, the economies of both countries will grow and prosper. It will add significantly to economic growth, incomes and employment in Canada. Canadian business will become more competitive in the Canadian market and world markets. Canada will become a stronger, more confident country in the world trading community. It will mean a richer Canada, a Canada which can afford to maintain and enhance the quality of life through, and for, Canadian cultural endeavours. A richer Canada will allow governments to stimulate economic development in Canada's poorer regions and maintain a safety net of social programs for all Canadians.

The accord sends a powerful signal against protectionism and for trade liberalization. It reflects the commitment of both governments to liberalize trade on a global basis through multilateral trade negotiations under the GATT.

The text of the agreement faithfully translates the elements of agreement reached on October 4, 1987 into binding legal language. To aid in the interpretation of this text, the annotations put in plain and *clear language the meaning of each of the principal sections and provide examples of the implications of the agreement for Canadian business. The tariff annexes setting out the detailed schedules for tariff elimination, product by product, are printed separately.*

The agreement has a Preamble and is divided into eight parts as follows:

Preamble:	*recording the political commitment of the two governments in entering into this agreement;*
Part One:	*establishing the objectives and scope of the agreement;*
Part Two:	*setting out the rules for trade in goods;*
Part Three:	*dealing with government procurement;*
Part Four:	*containing the three ground-breaking chapters covering: services, business travel and investment;*
Part Five:	*containing provisions dealing with financial services;*
Part Six:	*containing the general dispute settlement provisions and the special arrangements for dealing with antidumping and countervailing duty procedures;*
Part Seven:	*collecting in one chapter a series of miscellaneous provisions; and*
Part Eight:	*containing the final provisions dealing with annexes, entry into force and duration.*

Each Part is divided into chapters. Chapters are further divided into articles which are subdivided into paragraphs and sub-paragraphs. For ease of reference, the articles are numbered according to the chapter in which they are found. Article 301, for example, is the first article in Chapter Three dealing with rules of origin.

Various articles call up annexes located at the end of each chapter. In terms of drafting style, where matters of great detail need to be covered, the article establishes the basic obligation, whereas the annex develops how it will be implemented. Again, for ease of reference, the annex numbers correspond to the paragraph and article *establishing the annex. For example, paragraph 2 of Article 301 establishes the basic rule of origin for the agreement; Annex 301.2 provides the detailed provisions specifying how that rule is to be applied.*

Throughout the text, words that have a meaning that is critical to interpreting the text or that may vary from its plain, generic meaning, are defined. The definitions are found in the final article of each chapter for words used in that chapter (e.g., article 304 for rules of origin). Words that have a special or critical meaning and that are used the same way throughout the text are defined in article 201.

The printed text faithfully reproduces the text initialled on December 10, 1987. Any minor errors, such as misspellings or inaccurate cross-references, will be rectified with the American side prior to signature.

Preamble

The Preamble states the political commitment of Canada and the United States in entering into the agreement. It records the shared aspirations of the two countries in concluding the agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the two countries in implementing the provisions of the agreement and in resolving disputes. This may be particularly important in the context of Chapter Nineteen which specifically provides that any review of new antidumping or countervailing duty legislation for consistency with the agreement will be based on the object and purpose of the agreement which can be found, inter alia, in the Preamble.

The Preamble establishes from the outset that this is a trade agreement. Its purpose is to improve the economies of both countries, to strive for full employment and improved living standards and to strengthen both countries as competitors in the international marketplace. The ability of Canada to take measures to defend public welfare, such as unemployment insurance, is clearly stated.

Canada remains committed to the multilateral trading system and the growth of world trade and this commitment is clearly established in the Preamble.

PREAMBLE

The Government of Canada and the Government of the United States of America, resolved:

TO STRENGTHEN the unique and enduring friendship between their two nations;

TO PROMOTE productivity, full employment, and a steady improvement of living standards in their respective countries;

TO CREATE an expanded and secure market for the goods and services produced in their territories;

TO ADOPT clear and mutually advantageous rules governing their trade;

TO ENSURE a predictable commercial environment for business planning and investment;

TO STRENGTHEN the competitiveness of the United States and Canadian firms in global markets;

TO REDUCE government-created trade distortions while preserving the Parties' flexibility to safeguard the public welfare;

TO BUILD on their mutual rights and obligations under the *General Agreement on Tariffs and Trade* and other multilateral and bilateral instruments of cooperation; and

TO CONTRIBUTE to the harmonious development and expansion of world trade and to provide a catalyst to broader international cooperation;

HAVE AGREED as follows:

Part One: Objectives and Scope

Chapter One: Objectives and Scope

This Chapter sets the tone for the agreement as a whole. The objectives make clear the extent to which the Canada-United States Trade Agreement moves beyond other free-trade agreements negotiated under the GATT. Four previous agreements are particularly relevant: the 1960 European Free-Trade Area; the 1965 UK-Ireland Free-Trade Agreement; the 1983 Australia-New Zealand Closer Economic Relations Agreement; and the 1985 United States-Israel Agreement.

The new Canada-United States Agreement is broader in scope as it provides for liberalization in all sectors of the economy, including agriculture. No other trade agreement includes binding commitments on trade in services, business travel or investment. No other agreement provides a basis for developing new rules to deal with subsidies, dumping and countervailing measures.

The Chapter begins with a declaration that the agreement is consistent with Article XXIV of the GATT, the article which provides the framework in international law for negotiating free-trade agreements. It sets out a legal statement of the basic principle underlying the Agreement as a whole: Canada and the United States will treat each other's goods, services, investment, suppliers and investors as they treat their own insofar as the matters covered by this Agreement are concerned. Individual parts and chapters work out this principle in detail. Chapter Five in Part Two, for example, establishes national treatment for trade in goods and Chapters Six, Seven, and Eight all contain important amplifications of this principle. Similarly, the services and investment chapters begin with a statement of this principle and then develop how it will be applied.

The Agreement recognizes that it is based on the precedents and commitments between Canada and the United States established in other bilateral and multilateral agreements. For purposes of interpretation, it indicates that the provisions of this Agreement take precedence over all other agreements unless there is a specific provision to the contrary. For example, Article 908 states that the undertakings of the two governments under the Agreement on an International Energy Program take precedence over the provisions of this Agreement.

The wide scope of the Agreement is indicated from the outset in the agreed objectives. The Agreement will:

- *eliminate barriers to trade in goods and services between the two countries;*
- *facilitate conditions of fair competition within the free-trade area;*
- *significantly expand liberalization of conditions for cross-border investment;*
- *establish effective procedures for the joint administration of the Agreement and the resolution of disputes; and*
- *lay the foundation for further bilateral and multilateral co-operation to expand and enhance the benefits of the Agreement.*

The agreement will specifically involve federal, state, and provincial measures. While the two federal governments are the parties to the Agreement, the important role of the states and provinces is recognized, for instance in the commitments on wine and spirits.

Chapter Two: Definitions

In this Chapter, words critical to the application of the agreement as a whole are defined. For example, the word "measure" is frequently used in the agreement. It is defined as any governmental law, regulation, procedure, requirement or practice. In effect, the rights and obligations of the two governments basically involve what measures they can and cannot take and how they can take them.

PART ONE
OBJECTIVES AND SCOPE

Chapter One

Objectives and Scope

Article 101: Establishment of the Free-Trade Area

The Government of Canada and the Government of the United States of America, consistent with Article XXIV of the *General Agreement on Tariffs and Trade,* hereby establish a free-trade area.

Article 102: Objectives

The objectives of this Agreement, as elaborated more specifically in its provisions, are to:

a) eliminate barriers to trade in goods and services between the territories of the Parties;

b) facilitate conditions of fair competition within the free-trade area;

c) liberalize significantly conditions for investment within this free-trade area;

d) establish effective procedures for the joint administration of this Agreement and the resolution of disputes; and

e) lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement.

Article 103: Extent of Obligations

The Parties to this Agreement shall ensure that all necessary measures are taken in order to give effect to its provisions, including their observance, except as otherwise provided in this Agreement, by state, provincial and local governments.

Article 104: Affirmation and Precedence

1. The Parties affirm their existing rights and obligations with respect to each other, as they exist at the time of entry into force of this Agreement, under bilateral and multilateral agreements to which both are party.

2. In the event of any inconsistency between the provisions of this Agreement and such other agreements, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 105: National Treatment

Each Party shall, to the extent provided in this Agreement, accord national treatment with respect to investment and to trade in goods and services.

Chapter Two

General Definitions

Article 201: Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

covered service means a service as defined in Article1408;

enterprise means any juridical entity involving a financial commitment for the purpose of commercial gain;

existing means in effect at the time of the entry into force of this Agreement;

goods of a Party means domestic products as these are understood in the *General Agreement on Tariffs and Trade;*

Harmonized System means the Harmonized Commodity Description and Coding System, as amended from time to time, published by the Customs Cooperation Council;

measure includes any law, regulation, procedure, requirement or practice;

national means an individual who is a citizen or permanent resident of a Party and also includes, for the United States of America, "national of the United States" as defined in the existing provisions of the United States *Immigration and Nationality Act;*

new means subsequent to the entry into force of this Agreement;

originating means qualifying under the rules of origin set out in Chapter Three;

person means a national or an enterprise;

person of a Party means a national, or an enterprise constituted under the laws of, or principally carrying on its business within, the territory of the Party;

province means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors;

service includes a covered service;

state means a state of the United States of America, and the District of Columbia;

territory means

a) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources, and,
b) with respect to the United States of America,
  i) the customs territory of the United States of America which includes the fifty states, the District of Columbia and Puerto Rico,
  ii) the foreign trade zones located in the United States of America and Puerto Rico, and
  iii) any areas beyond the territorial seas of the United States of America within which, in accordance with international law and its domestic laws, the United States of America may exercise rights with respect to the seabed and subsoil and their natural resources;

third country means any country other than Canada or the United States of America or any territory not a part of the territory of the Parties; and

transition period means the period from the date of entry into force of this Agreement to either December 31, 1998 or such earlier date as the Parties may agree.

2. For purposes of this Agreement, unless otherwise specified, a reference to province or state includes local governments.

Part Two:
Trade in Goods

Part Two contains chapters three through twelve dealing with trade in goods. It builds on the GATT, its ancillary agreements as well as other existing arrangements involving the two governments such as the Harmonized Commodity Description and Coding System (the so-called Harmonized System by which imports are classified for purposes of assessing customs duties), the Canada-United States Automotive Products Trade Agreement and the Agreement on an International Energy Program. Where both governments were satisfied with existing arrangements, they are incorporated by reference into the agreement. For example, the GATT Code on Technical Barriers to Trade is the basis of Chapter Six and the provisions of GATT Article XX (General Exceptions) form the basis of Chapter Twelve. In most instances, however, such as Chapter Three dealing with rules of origin, Canada and the United States have entered into new obligations unique to the Free-Trade Agreement.

Chapters Three through Six and Eleven and Twelve contain provisions applicable to all trade in goods. The four sectoral chapters, Seven for Agriculture, Eight for Wine and Distilled Spirits, Nine for Energy and Ten for Automotive Products, address issues of particular concern to those sectors.

Chapter Three: Rules of Origin for Goods

The Agreement will eliminate all tariffs on trade between Canada and the United States over a ten-year period. However, both countries will continue to apply their existing tariffs to imports from other countries. Rules of origin are, therefore, needed to define those goods which are entitled to duty-free, or "free-trade area" treatment when exported from one country to the other.

Since the Agreement is intended to benefit the producers of both countries and generate employment and income for Canadians and Americans, origin rules require that goods traded under the Agreement be produced in either country or both. The origin rules establish the general principle that goods that are wholly produced or obtained in either Canada or the United States or both will qualify for area treatment. Goods incorporating offshore raw materials or components will also qualify for area treatment if they have been *sufficiently changed in either Canada or the United States, or both, to be classified differently from the raw materials or components from which they are made. In certain cases, goods, in addition to being classified differently, will also need to incur a certain percentage of manufacturing cost in either or both countries, in most cases 50 percent. This is particularly important for assembly operations.*

In practical terms, goods other than those which originate wholly in either Canada and/or the United States, will have to incorporate some significant Canadian or U.S. content. For example, goods imported in bulk from offshore and repackaged and labelled in the United States would not qualify for area treatment, while a product incorporating only some imported components in most instances would. A bicycle, for example, using Canadian steel for its frame and assembled in Canada using imported wheels and gears would qualify as a product of Canadian origin, if 50 percent of its manufacturing cost is accounted for in Canada and/or the United States.

Apparel made from fabrics woven in Canada or the United States will qualify for duty-free treatment whereas apparel made from offshore fabrics will qualify for duty-free treatment only up to the following levels:

	Non-Woolen Apparel	*Woolen Apparel*
	(in million square yard equivalent)	
Imports from Canada	*50*	*6*
Imports from the United States	*10.5*	*1.1*

Above these levels, apparel made from offshore fabrics will be considered, for tariff purposes, as products of the country from which the fabrics were obtained. The levels established for imports from Canada are well above current trade levels. Canadian clothing manufacturers, including manufacturers of fine suits, coats, snowsuits and parkas, can, for all practical purposes, continue to buy their fabric from the most competitive suppliers around the world and still benefit from duty-free access to the United States. In addition, should their exports to the United States consume more than 56 million square yards of imported fabric, they will pay the US tariff but be able to benefit from the drawback of Canadian duties paid on such fabric (see Chapter Four).

There is a similar quantitative limit governing duty-free exports to the United States of non-woolen fabrics or textile articles woven or knitted in Canada from yarn imported from a third country. Such exports, otherwise meeting the origin rules, will benefit from area treatment up to a maximum annual quantity. The level has initially been set at 30 million square yards for the first four years. The two governments will revisit this issue in 1990-1991 to work out a mutually satisfactory revision of this arrangement.

Definitions in Article 304 set out the terms which will be used by customs officials in deciding whether a good is entitled to duty-free treatment while Annex 301.2 sets out general rules of interpretation as well as detailed rules for each of the 21 individual product or commodity sections of the Harmonized System. By consulting the definitions and the annex, producers can determine whether the goods they export to the other country will be entitled to area treatment.

The rules of interpretation in Annex 301 make clear that goods that are further processed in a third country before being shipped to their final destination would not qualify for area treatment even if they meet the rule of origin. For example, cloth woven from U.S. fibres, cut in the United States but sewn into a shirt in Mexico, would qualify for duty-free re-entry into the United States under its outward-processing program, but would not qualify for duty-free entry into Canada under the Agreement.

The chapter contains safeguards to prevent circumvention of the rules as well as a process for consultation and revision to ensure that the rules of origin evolve to take account of changes in production processes.

PART TWO
TRADE IN GOODS

Chapter Three

Rules of Origin for Goods

Article 301: General Rules

1. Goods originate in the territory of a Party if they are wholly obtained or produced in the territory of either Party or both Parties.

2. In addition, goods originate in the territory of a Party if they have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in Annex 301.2 or to such other requirements as the Annex may provide when no change in tariff classification occurs, and they meet the other conditions set out in that Annex.

3. A good shall not be considered to originate in the territory of a Party pursuant to paragraph 2 merely by virtue of having undergone:

   a) simple packaging or, except as expressly provided by the rules of Annex 301.2, combining operations;

   b) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

   c) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of this Chapter.

4. Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be deemed to have the same origin as that equipment, machinery, apparatus, or vehicle; provided, that the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

Article 302: Transshipment

Goods exported from the territory of one Party originate in the territory of that Party only if they meet the applicable requirements of Article 301 and are shipped to the territory of the other Party without having entered the commerce of any third country and, if shipped through the territory of a third country, they do not undergo any operations other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition, and the documents related to their exportation and shipment from the territory of a Party show the territory of the other Party as their final destination.

Article 303: Consultation and Revision

The Parties shall consult regularly to ensure that the provisions of this Chapter are administered effectively, uniformly and consistently with the spirit and intent of this Agreement. If either Party concludes that the provisions of this Chapter require revision to take account of developments in production processes or other matters, the proposed revision along with supporting rationale and any studies shall be submitted to the other Party for consideration and any appropriate action pursuant to Article 2104.

Article 304: Definitions

For purposes of this Chapter:

direct cost of processing or **direct cost of assembling** means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including:

a) the cost of all labour, including benefits and on-the-job training, labour provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labour, whether provided by employees or independent contractors;
b) the cost of inspecting and testing the goods;
c) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;
d) development, design, and engineering costs;

e) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and
f) royalty, licensing, or other like payments for the right to the goods;

but not including:

g) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;
h) brokerage charges relating to the importation and exportation of goods;
i) costs for telephone, mail and other means of communication;
j) packing costs for exporting the goods;
k) royalty payments related to a licensing agreement to distribute or sell the goods;
l) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used by personnel charged with administrative functions; or
m) profit on the goods;

materials means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods;

value of materials originating in the territory of either Party or both Parties means the aggregate of:

a) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and
b) when not included in that price, the following costs related thereto:
    i) freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in subparagraph (a) to the location of the producer;
    ii) duties, taxes and brokerage fees on such materials paid in the territory of either Party or both Parties;
    iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.*

value of the goods when exported to the territory of the other Party means the aggregate of:

a) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the following costs related thereto:
   i) freight, insurance, packing and all other costs incurred in transporting all materials to the location of the producer;
   ii) duties, taxes and brokerage fees on all materials paid in the territory of either Party or both Parties;
   iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and
   iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;* and
b) the direct cost of processing or the direct cost of assembling the goods;

goods wholly obtained or produced in the territory of either Party or both Parties means:

a) mineral goods extracted in the territory of either Party or both Parties;
b) goods harvested in the territory of either Party or both Parties;
c) live animals born and raised in the territory of either Party or both Parties;
d) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
e) goods produced on board factory ships from the goods referred to in subparagraph (d) provided such factory ships are registered or recorded with that Party and fly its flag;
f) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

g) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

h) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

i) goods produced in the territory of either Party or both Parties exclusively from goods referred to in subparagraphs (a) to (h) inclusive or from their derivatives, at any stage of production.

Annex 301.2

Interpretation

1. The basis for tariff classification in this Annex is the Harmonized System.

2. Whenever processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described by the rules set forth in this Annex, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party, provided that they have not subsequently undergone any processing or assembly outside the territory of either Party.

3. Whenever assembly of goods in the territory of a Party fails to result in a change of tariff classification because

a) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

b) the tariff subheading for the goods provides for both the goods themselves and their parts,

such goods shall not be treated as goods originating in the territory of a Party.

4. Notwithstanding paragraph 3, goods shall nonetheless be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party; provided, that:

a) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party, and

b) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of Article 302.

5. The provisions of paragraph 4 shall not apply to goods of chapters 61-63 of the Harmonized System.

6. In making the determination required by subparagraph 4(a), and in making the same or a similar determination when required by the rules of this Annex, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

Rules

Section I
Live Animals; Animal Products
(Ch. 1-5)

A change from one chapter to another; no changes within chapters.

Section II
Vegetable Products
(Ch. 6-14)

1. A change from one chapter to another; no changes within chapters except that agricultural and horticultural goods grown in the territory of a Party shall be treated as originating in the territory of that Party even if grown from seed or bulbs imported from a third country.

2. A change to subheadings 0901.12-0901.40 from any other subheadings, including another subheading within that group.

Section III
Animal or Vegetable Fats and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes
(Ch. 15)

1. A change to Chapter 15 from any other chapter.

2. A change to any of the following subheadings from any other subheading: 1507.90, 1508.90, 1511.90, 1512.19, 1512.29, 1513.19, 1513.29, 1514.90, 1515.19, 1515.29.

3. A change to heading 1516 from any other heading.

4. A change to heading 1517 from any other heading.

5. A change to headings 1519-1520 from any other heading outside that group.

6. A change to subheading 1519.19 from any other subheading.

7. A change to subheading 1519.20 from any other subheading.

8. A change to subheading 1520.90 from any other subheading.

Section IV
Prepared Foodstuffs; Beverages, Spirits, and Vinegar; Tobacco and Manufactured Tobacco Substitutes
(Ch. 16-24)

1. A change from one chapter to another, except for goods of Chapter 20 subject to rule 5.

2. A change to heading 1704 from any other heading.

3. A change to heading 1806 from any other heading.

4. A change to subheading 1806.31 or 1806.90 from any other subheading.

5. Fruit, nut, and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine, or in natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.

6. A change to subheading 2009.90 from any other subheading; provided, that neither a single juice ingredient, nor juice ingredients from a single third country, constitutes in single-strength form more than 60 percent by volume of the product.

7. A change to headings 2207-2209 from any other heading outside that group.

8. A change to heading 2309 from any other heading.

9. A change to headings 2402-2403 (except 2403.91) from any other heading outside that group.

Section V
Mineral Products
(Ch. 25-27)

1. A change from one chapter to another.

2. A change to headings 2710-2715 from any other heading outside that group.

3. A change to heading 2716 from any other heading.

Section VI
Products of the Chemical or Allied Industries
(Ch. 28-38)

1. A change to Chapters 28-38 from any chapter outside that group.

2. A change to any subheading of Chapters 28-38 from any other subheading within those chapters; provided, except for the other rules in this section, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

3. A change to a heading of Chapter 30 from any other heading, including other headings within that chapter, except a change to heading 3004 from heading 3003.

4. A change to Chapter 31 from any other chapter.

5. A change to headings 3208-3215 from any other heading outside that group.

6. A change to Chapter 33 from any other chapter.

7. A change to heading 3304-3307 from any heading outside that group.

8. A change to a heading of Chapter 34 from any other heading, including another heading within that chapter.

9. A change to subheadings 3402.20 -3402.90 from any other subheading outside that group.

10. A change to a heading of Chapter 35 from any other heading, including another heading within that chapter.

11. A change to a heading of Chapter 36 from any other heading, including another heading within that chapter.

12. A change to Chapter 37 from any other chapter.

13. A change to heading 3704 from any other heading.

14. A change to headings 3705-3706 from any other heading outside that group.

15. A change to heading 3808 from any other heading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party, or, in the case of goods which contain more than one active ingredient, not less than 70 percent of the value of the goods when exported to the territory of the other Party. Any materials that are eligible for duty-free treatment in both Parties on a most-favoured-nation basis, or any materials imported into the territory of either Party which, if imported into the territory of the United States of America, would be free of duty under a trade agreement that is not subject to a competitive need limitation, shall be treated as materials originating in the territory of a Party.

Section VII
Plastics and Articles Thereof; Rubber and Articles Thereof
(Ch. 39-40)

1. A change to any heading of Chapter 39 from any other heading, including another heading within that chapter; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

2. A change to Chapter 40 from any other chapter.

3. A change to any heading of Chapter 40 from any other heading within that chapter; provided, except for the rules below listed in this section, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50

percent of the value of the goods when exported to the territory of the other Party.

4. A change to headings 4007-4008 from any other heading outside that group.

5. A change to headings 4009-4017 from any other heading outside that group.

6. A change to subheading 4012.10 from any other subheading.

Section VIII

Raw Hides and Skins, Leather, Furskins and Articles Thereof; Saddlery and Harness, Travel Goods, Handbags, and Similar Containers; Articles of Animal Gut (Other Than Silkworm Gut)

(Ch. 41-43)

1. A change from one chapter to another.

2. A change to headings 4104-4111 from any other heading outside that group.

3. A change to heading 4302 from any other heading.

4. A change to headings 4303-4304 from any other heading outside that group.

Section IX

Wood and Articles of Wood; Wood Charcoal; Cork and Materials of Cork; Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerware

(Ch. 44-46)

1. A change from one chapter to another.

2. A change between headings in Chapter 44.

3. A change to any of the following United States tariff items from any other United States tariff item: 4412.11.50, 4412.12.50, 4412.19.50, 4412.29.50, or 4412.99.90. This rule applies only to goods originating in the territory of Canada and imported into the territory of the United States of America.

4. A change to headings 4503-4504 from any other heading outside that group.

5. A change to heading 4602 from any other heading.

Section X
Pulp of Wood or of other Fibrous Cellulosic Material; Waste and Scrap of Paper or Paperboard; Paper and Paperboard and Articles Thereof
(Ch. 47-49)

1. A change from one chapter to another.

2. A change to heading 4808-4809 from any other heading outside that group.

3. A change to headings 4814-4823 from any other heading outside that group except a change from heading 4809 to heading 4816.

Section XI
Textiles and Textile Articles
(Ch. 50-63)

Silk

1. A change to headings 5004-5006 from any heading outside that group.

2. A change to heading 5007 from any other heading.

Wool

3. A change to headings 5106-5113 from any heading outside that group.

Cotton

4. A change to headings 5204-5212 from any heading outside that group.

Flax, Jute, Sisal, Paper Yarn

5. A change to headings 5306-5311 from any heading outside that group.

Man-Made Filaments

6. A change to any heading of Chapter 54 from any other chapter.

Man-Made Staple Fibers

7. A change to headings 5501-5507 from any other chapter.

8. A change to headings 5508-5516 from any heading outside that group.

Wadding, Felt, Etc.

9. A change to any heading of Chapter 56 from any heading outside that chapter other than headings 5106-5113, 5204-5212, 5306-5311, or headings of Chapters 54 and 55.

Carpets and Textile Floor, Etc.

10. A change to any heading of Chapter 57 from any heading outside that chapter other than headings 5106-5113, 5204-5212, 5306-5309, 5311, or 5508-5516.

Special Woven Fabrics, Etc.

11. A change to any heading of Chapter 58 from any heading outside that chapter other than headings 5106-5113, 5204-5212, 5306-5311, or headings of Chapters 54 and 55.

Impregnated, Coated, Covered, or Laminated Textile Fabrics

12. A change to any heading of Chapter 59 from any heading outside that chapter other than headings 5111-5113, 5208-5212, 5309-5311, 5407-5408, or 5512-5516.

Knitted or Crocheted Fabrics

13. A change to any heading of Chapter 60 from any heading outside that chapter other than headings 5106-5113, 5204-5212, 5309-5311, or headings of Chapters 54 and 55.

Apparel - Knitted or Crocheted

14. A change to any heading of Chapter 61 from any heading outside that chapter other than headings 5111-5113, 5208-5212, 5309-5311, 5407-5408, or 5512-5516; provided, that goods are both cut (or knit to shape) and sewn or otherwise assembled in the territory of either Party or both Parties.

Apparel - Not Knitted or Crocheted

15. A change to any heading of Chapter 62 from any heading outside that chapter other than headings 5111-5113, 5208-5212, 5309-5311, 5407-5408, or 5512-5516; provided, that goods are both cut and sewn in the territory of either Party or both Parties.

Other Made-Up Articles

16. A change to any heading of Chapter 63 from any heading outside that chapter other than headings 5106-5113, 5204-5212, 5306-5311, or headings of Chapters 54 and 55; provided, that goods are both cut and sewn in the territory of either Party or both Parties.

17. Notwithstanding rules 14 and 15, apparel goods provided for in Chapters 61 and 62 that are both cut and sewn in the territory of either Party or both Parties from fabric produced or obtained in a third country, and that meet other applicable conditions for preferred tariff treatment under this Agreement, shall be subject to the rate of duty provided in Annex 401.2, in the annual quantities set forth below, and shall, above those quantities for the remainder of the annual period, be subject to duty at the rates provided for most-favoured nations.

	From Canada	From the United States of America
Non-woolen apparel	50 million SYE	10.5 million SYE
Woolen apparel	6 million SYE	1.1 million SYE

SYE- Square Yard Equivalent

Trade in the apparel described in rule 17 shall be monitored by the Parties with a view to adjusting the annual quantity limitations at the request of either Party based on the ability of apparel producers to obtain supplies of particular fabrics originating within the territories of the Parties. Before January 1, 1998, the annual quantity limitations shall be renegotiated to reflect current conditions in the textile and apparel industries located within the territories of the Parties, including the ability of such apparel producers to obtain supplies of particular fabrics originating within the territories of the Parties.

18. Notwithstanding rules 4, 5, 6, 8, 11, 13 and 16, non-woolen fabric and non-woolen made-up textile articles provided for in Chapters 52-55, 58, 60 and 63 that are woven or knitted in Canada from yarn produced or obtained in a third country, and that meet other applicable conditions for preferred tariff treatment under this Agreement, shall be subject to the rate of duty provided in Annex 401.2, in the annual quantity of 30 million square yards for the period commencing on January 1, 1989 and ending on December 31, 1992, and shall, above this quantity for the remainder of the annual period, be subject to duty at the rates provided for most-favoured nations. The Parties agree to revisit the quantitative element of this agreement two years after its entry into force together with representatives of the industries in order to work out a mutually satisfactory solution, taking into account the availability of yarns in both countries.

Section XII

Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking Sticks, Seatsticks, Whips, Riding Crops and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair

(Ch. 64-67)

1. A change from one chapter to another.

2. A change to subheadings 6401.10-6406.10 from any other subheading outside that group; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

3. A change to headings 6503-6507 from any other heading outside that group.

4. A change to headings 6601-6602 from any other heading outside that group; provided that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

5. Within heading 6701, goods fabricated from feathers (such as fans, feather dusters, and feather apparel) in which feathers are the material or component that gives the fabricated goods their essential character shall be treated as a good of the country in which fabrication occurred.

6. A change to heading 6702 from any other heading.

7. A change to heading 6704 from any other heading.

Section XIII
Articles of Stone, Plaster, Cement, Asbestos, Mica, or Similar Materials
(Ch. 68-70)

1. A change from one chapter to another.

2. A change to subheading 6812.20 from any other subheading.

3. A change to subheading 6812.30-6812.40 from any other subheading outside that group.

4. A change to subheading 6812.50 from any other subheading.

5. A change to subheadings 6812.60-6812.90 from any other subheading outside that group.

6. A change to heading 6813 from any other heading.

7. A change to headings 7003-7006 from any other heading outside that group.

8. A change to headings 7007-7020 from any other heading outside that group.

9. A change to subheading 7019.20 from any other heading.

Section XIV
Natural or Cultured Pearls, Precious or Semiprecious Stones, Precious Metals, Metals Clad with Precious Metals, and Articles Thereof; Imitation Jewelry; Coin
(Ch. 71)

1. A change from one chapter to another.

2. A change to headings 7113-7118 from any other heading outside that group, except that pearls, temporarily or permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall be treated as a good of the country in which the pearls were obtained.

Section XV
Base Metals and Articles of Base Metals
(Ch. 72-83)

1. A change from one chapter to another; provided, that goods subject to rules 9 or 22 meet the conditions set forth therein.

2. A change to headings 7206-7207 from any other heading outside that group.

3. A change to headings 7208-7216 from any other heading outside that group.

4. A change to heading 7217 from any other heading except headings 7213-7215.

5. A change to headings 7218-7222 from any other heading outside that group.

6. A change to heading 7223 from any other heading except headings 7221-7222.

7. A change to headings 7224-7228 from any other heading outside that group.

8. A change to heading 7229 from any other heading except headings 7227-7228.

9. A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections of heading 7216:

a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination;

b) adding attachments or weldments for composite construction;

c) adding of attachments for handling purposes;

d) adding weldments, connectors, or attachments to H-sections or I-sections; provided, that the maximum cross-sectional dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections;

e) painting, galvanizing, or otherwise coating; or

f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.

10. A change to headings 7309-7326 from any other heading outside that group.

11. A change to headings 7403-7408 from any other heading outside that group; provided, with the exception of a change to subheading 7408.19, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

12. A change to heading 7409 from any other heading.

13. A change to headings 7410-7419 from any other heading outside that group; provided, that with respect to a change to heading 7413, the

value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of goods when exported to the territory of the other Party.

14. A change to heading 7505 from any other heading.

15. A change to heading 7506 from any other heading.

16. A change to United States tariff item 7506.20.50 from any other United States tariff item. This rule applies only to goods originating in the territory of Canada and imported into the territory of the United States of America.

17. A change to headings 7507-7508 from any other heading outside that group.

18. A change to headings 7604-7606 from any other heading outside that group.

19. A change to heading 7607 from any other heading.

20. A change to headings 7608-7609 from any other heading outside that group.

21. A change to headings 7610-7616 from any other heading outside that group.

22. A change to headings 7801 or 7901 from headings of other chapters; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

23. A change to headings 7803-7806 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

NOTE: see rule 22 regarding 7901.

24. A change to headings 7904-7907 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

25. A change to headings 8003-8004 from any other heading outside that group.

26. A change to headings 8005-8007 from any other heading outside that group.

27. A change to any of the following subheadings from any other subheading: 8101.92, 8101.99, 8102.92, 8102.99, 8103.90, 8104.90, 8105.90, 8108.90, 8109.90.

28. A change to subheading 8107.90 from any other subheading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

29. A change to United States tariff item 8111.00.60 from any other United States tariff item. This rule applies only to goods originating in the territory of Canada and imported into the territory of the United States of America.

Section XVI
Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, and Parts and Accessories of Such Articles
(Ch. 84-85)

1. A change from one chapter to another, other than a change to heading 8544.

2. A change from one heading (other than a parts heading) to another heading, other than heading 8528 or 8529.

3. A change to heading 8407 from any other heading; provided, that the value of materials originating in the territory of either Party

or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party

4. A change to heading 8528 or 8529 from any other heading, a change from a parts heading to a heading other than a parts heading, or a change from a parts subheading to a subheading other than a parts subheading; provided, with the exception of a change to subheading 8471.92, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

5. A change to subheadings 8471.20-8471.91 from any subheadings outside that group.

6. A change to subheadings 8516.10-8516.79 from subheading 8516.80.

7. A change to heading 8524 from any other heading. Goods subject to classification under headings 8523 or 8524 shall remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

NOTE: see rule 4 regarding headings 8528 and 8529.

8. A change to heading 8544 from any other heading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

Section XVII
Vehicles, Aircraft, Vessels and Associated Transport Equipment
(Ch. 86-89)

1. A change from one chapter to another.

2. A change to any heading of this Section (other than a heading within the groups 8701-8705 or 8901-8905) from another heading other than a parts heading.

3. A change to any heading of this Section from a parts heading; or within any heading, a change to any subheading from a parts subheading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

4. A change to headings 8701-8705 from any other heading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

5. A change to headings 8901-8905 from any other headings; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

Section XVIII

Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus, Clocks and Watches; Musical Instruments; Parts and Accessories Thereof

(Ch. 90-92)

1. A change from one chapter to another.

2. A change to any heading of this Section from a parts heading, or to any subheading from a parts subheading; provided, with the exception of a change to heading 9009, that the value of materials originating in the territory of either Party of both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

3. A change to any heading within the group 9005-9032 from any other heading (including another heading within that group), except that a change from a parts heading shall be subject to rule 2 of this Section.

4. Notwithstanding rule 2, goods subject to classification within headings 9101-9107 shall be treated as products of the country in which the movement subject to classification under headings 9108-9110 was produced.

5. A change to headings 9108-9113 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

Section XIX
Arms and Ammunition; Parts and Accessories Thereof
(Ch. 93)

1. A change to this chapter from any other chapter.

2. A change to any heading of this Section from a parts heading, or to any subheading from a parts subheading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

Section XX
Miscellaneous Manufactured Articles
(Ch. 94-96)

1. A change from one chapter to another, except a change to subheading 9404.90 from headings 5007, 5111-5113, 5208-5212, 5309-5311, 5407-5408, and 5512-5516.

2. A change to any heading of this Section from a parts heading, or to any subheading from a parts subheading; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either

Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

3. A change to a subheading within the group 9608.10-9608.39 from a subheading within the group 9608.91-9608.99; provided, that the value of materials originating in the territory of either Party or both Parties plus the direct cost of processing performed in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party.

4. A change to subheading 9614.20 from subheading 9614.10.

Section XXI
Works of Art, Collectors' Pieces and Antiques
(Ch. 97)

1. A change to this chapter from any other chapter.

Chapter Four: Border Measures

Key to any free-trade agreement, and required by the provisions of the GATT, is the elimination of duties and other restrictions on substantially all the trade between the parties. Implementation of the provisions of Chapter Four will achieve this requirement by providing for the removal of the tariff, tariff-related measures, quantitative restrictions and other restrictive measures applied at the border by January 1, 1998. This ten-year period is consistent with similar transition periods established in previous agreements. For example, the European Community initially provided a twelve-year period. The Tokyo Round tariff cuts were phased in over eight years.

Tariffs

The tariff has been an important but waning import policy instrument in Canada for many decades. More than 75 percent of Canada-United States trade now moves free of duty. This figure, however, fails to take account of the trade which could take place but for tariffs. High U.S. tariffs -- 15 percent and more on petrochemicals, metal alloys, clothing and many other products -- continue to pose serious barriers to the U.S. market and prevent Canadian firms from achieving the economies of scale on which increased competitiveness and employment in Canadian industry depend. In addition to high tariffs, escalating tariffs on resource-based products discourage the development of more sophisticated manufacturing in Canada. While a 1.7 cent per kilo tariff on zinc ore may not impose a significant barrier, a 19 percent tariff on zinc alloy has effectively retarded the establishment of a zinc metal fabricating industry in Canada. Additionally, the existence of Canadian tariffs on imports from the United States is often costly to Canadian consumers and producers.

This chapter eliminates all remaining tariffs over a ten-year period in order to allow companies to adjust to the new competitive circumstances. The cuts will begin January 1, 1989 and after that date, no existing tariff may be increased unless specifically provided elsewhere in the agreement (for example, in Chapter Eleven providing for temporary emergency safeguards). Tariffs will be eliminated by January 1, 1998 on the basis of three formulas:

- *for those sectors ready to compete now, tariffs will be eliminated on the Agreement entering into force on January 1, 1989, for example:*

    computers and equipment
    some unprocessed fish
    leather
    yeast
    unwrought aluminum
    vending machines and parts
    airbrakes for railroad cars
    skates
    some paper-making machinery
    some pork
    fur & fur garments
    whiskey
    animal feeds
    ferro alloys
    needles
    skis
    warranty repairs
    motorcycles

- *for other sectors, tariffs will be eliminated in five equal steps, starting on January 1, 1989, for example:*

    subway cars
    printed matter
    paper and paper products
    paints
    explosives
    aftermarket auto parts
    chemicals including resins (excluding drugs and cosmetics)
    furniture
    hardwood plywood
    most machinery

- *all other tariffs will be eliminated in ten steps, most starting on January 1, 1989, for example:*

    most agricultural products
    textiles and apparel
    softwood plywood
    railcars
    steel
    appliances
    pleasure craft
    tires

Annex 401 (published separately) sets out the schedule of tariff cuts for each product according to its classification in the Harmonized System. If both countries agree, the staging can be accelerated. Both the European Community and the European Free-Trade Association concluded after a few years that they would benefit from accelerated tariff elimination. Australia and New Zealand are currently discussing speeding up their tariff reductions.

In the case of certain specialty steel items currently subject to temporary emergency safeguards by the United States, tariff cuts will not begin until October 1, 1989, as required by U.S. law. Large *telephone switching equipment will be phased out in three annual steps ending January 1, 1991.*

Canada has also undertaken to continue providing relief from customs duties on some machinery and equipment and repair and replacement parts for such machinery and equipment not available from Canadian suppliers. Between now and January 1, 1989, Canada will examine this list of machinery and equipment with a view to adding to it. This will ensure that Canadian manufacturers seeking to modernize to take advantage of other provisions of the Agreement will be able to purchase new machinery and equipment at competitive prices.

Canadian and United States tariffs applied to products from other countries will be unchanged as a result of this agreement. Both governments are participating in the Uruguay Round of Multilateral Trade Negotiations which could result in reductions or elimination of many of these tariffs. These reductions would, of course, form part of a larger package which would involve improved market access to the European Community, Japan and other developed, as well as developing, countries. These reductions will be addressed on their own merits and wholly separately from the bilateral agreement.

The combined effect of eliminating both Canadian and U.S. tariffs will be to allow Canada's manufacturing industry to rationalize and modernize and become more competitive. Canadian companies will be able to increase their penetration of the U.S. market and of world markets in general. The result should be more and better jobs for Canadians.

Customs Matters

Whatever the level of tariffs, the way in which they are applied, including provisions for granting duty remissions to importers, can affect trade flows. To ensure that the objectives of tariff elimination are achieved, Canada and the United States have also agreed to eliminate or regulate tariff-related programs which influence the flow of trade. The gradual elimination of most of these programs will ensure that by the end of the transition period, when all tariffs will have been eliminated, Canadian and U.S. companies will operate according to similar customs rules on bilateral trade. Both governments, however, will retain separate customs and tariff regimes for trade with third countries.

Specifically, the agreement addresses customs user fees, duty drawbacks, and duty remissions.

The United States applies a customs user fee calculated as a percentage of the value of each import transaction (currently 0.17 percent). Even if the tariff is zero, the exporter must pay this amount when goods cross from Canada into the United States. This fee constitutes an additional tariff and increases the cost of exporting.

Article 403 provides that the customs user fee applied by the United States will be phased out on imports from Canada by January 1, 1994 and prevents either country from establishing a new customs user fee on imports of goods which meet the origin rules. Canadian exporters will save tens of millions of dollars with the elimination of this fee.

Both countries refund the customs duty levied on imported materials and components when these are incorporated into exported goods. This is called duty drawback. In the U.S., for example, foreign trade zones are often used as a means for U.S. exporters to avoid having to pay U.S. duties on imported components. Some of the advantages of the free-trade area, however, would be eroded if a U.S. producer could source some components from a third country, manufacture a final product in a U.S. foreign trade zone without paying any duty on these components and compete in Canada with a manufacturer who has paid Canadian duties on the same components. Accordingly, the agreement provides for duty drawbacks on third-country materials and similar programs to be eliminated for bilateral trade after January 1, 1994.

There are two exceptions to the general drawback obligation. Drawbacks will continue to be permitted on citrus products. As well, duties paid on fabric imported and made up into apparel and subsequently exported to the other country can be recovered if the apparel does not qualify for duty-free treatment. Chapter Three establishes quotas for duty-free treatment for apparel made up from imported fabrics. Should trade rise above these levels, Canadian manufacturers using imported fabric will be able to apply for drawback of Canadian duties paid on fabric incorporated into apparel exported to the United States.

Canadian customs law permits duties on imports to be refunded to specific companies if these companies meet commitments *(performance requirements) related to production, exports or employment. This practice is called duty waivers or remissions. The agreement provides for the elimination of duty waivers wherever such waivers are tied to specific performance requirements such as production in one country or exports to the other except for automotive waivers as listed in Chapter Ten. No new customs duty waivers incorporating performance requirements can be introduced as of June, 1988, or whenever the U.S. Congress approves the agreement, and all such customs duty waivers will be eliminated by January 1, 1998.*

Customs Administration

Given the size of our existing bilateral trade, there is already extensive cooperation between Canadian and U.S. customs authorities. Article 406 and its annex provides for further cooperation by specifying a number of matters where it is not only desirable but necessary for the two customs authorities to work closely together. These matters include declarations of origin on imported and exported goods, administration and enforcement, the uniform application of rules of origin, the facilitation of trade in the areas of statistics collection and documentation, as well as the operations of customs offices.

Import and Export Restrictions

Import or export quotas can be severely damaging to international trade by limiting the quantity which may be traded. In Article 407, Canada and the United States affirm their GATT obligations not to prohibit or restrict imports or exports of goods in bilateral trade except under strictly defined circumstances. Nothing in the Agreement, for example, in any way prevents Canada from prohibiting the import of pornographic materials (see Chapter Twelve). Outside of such special circumstances, these obligations provide a guarantee that the benefits of tariff elimination will not be eroded by quotas or other restrictions. Unless specifically allowed by the agreement, e.g., "grandfathered" or permitted under the GATT, existing quantitative restrictions will be eliminated, either immediately or according to a timetable.

Among those restrictions eliminated are the Canadian embargoes on used aircraft and used automobiles (provided in Chapter Ten) and the U.S. embargo on lottery materials. Canada and the United

States will retain their right to control log exports while the United States will retain marine transportation restrictions under the Jones Act (provided for in Chapter Twelve). For shipbuilders, Canada has reserved the right to apply quantitative restrictions on U.S. vessels until such time as the United States removes the prohibitions under the Jones Act on Canadian vessels. Provincial laws governing the export of unprocessed fish caught off the East Coast have been safeguarded(also provided for in Chapter Twelve). Both countries will continue to be able to apply import restrictions to agricultural goods where these are necessary to ensure the operation of a domestic supply management or support program.

Where either Canada or the United States applies restrictions on trade with other countries, it may limit or prohibit the pass-through of imports from those other countries into its own territory. It may also require that its exports to the other be consumed within the other's territory. Controls on exports to third countries for strategic reasons will thus continue to be enforced.

Export Taxes

Neither country applies export taxes as a matter of general policy. These taxes render exporters less competitive and are highly disruptive of production and investment. Article 408 confirms existing practice by specifically prohibiting export taxes or duties on bilateral trade unless the same tax is applied on the same goods consumed domestically.

The 1986 Softwood Lumber Understanding, which requires Canada to collect an export tax on Canadian softwood exports to the United States until such time as the provincial governments have adjusted certain stumpage practices, is specifically grandfathered by Article 1910.

Other Export Measures

GATT obligations recognize that circumstances may arise where export restrictions are necessary. These circumstances include situations of short supply, conservation of natural resources where domestic production or consumption is also restrained and restrictions imposed in conjunction with domestic price stabilization schemes.

Article 409 requires that export restrictions for such purposes not reduce the proportion of the good exported to the other party relative to the total supply of the good compared to the proportion exported prior to the imposition of the restriction. Any such restriction must not be designed to disrupt normal channels of supply or proportions among specific goods being restricted. It prohibits the use of licences, fees or other measures to charge higher prices for exports than for domestic sales (see also Chapter Nine on energy).

Chapter Four

Border Measures

Article 401: Tariff Elimination

1. Neither Party shall increase any existing customs duty, or introduce any customs duty, on goods originating in the territory of the other Party, except as otherwise provided in this Agreement.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on goods originating in the territory of the other Party in accordance with the following schedule:

a) duties on goods provided for in each of the items designated as staging category A in each Party's Schedule contained in Annex 401.2 shall be eliminated entirely and such goods shall be free of duty, effective January 1, 1989;

b) duties on goods provided for in each of the items designated as staging category B in each Party's Schedule contained in Annex 401.2 shall be removed in five equal annual stages commencing on January 1, 1989, and such goods shall be free of duty, effective January 1, 1993; and

c) duties on goods provided for in each of the items designated as staging category C in each Party's Schedule contained in Annex 401.2 shall be removed in ten equal annual stages commencing on January 1, 1989, and such goods shall be free of duty, effective January 1, 1998.

3. The base rate of duty for purposes of determining the interim stages of reduction for a tariff item under subparagraphs (b) and (c) of paragraph 2 is the rate indicated for the item in each Party's Schedule contained in Annex 401.2.

4. Except as otherwise provided in this Agreement, goods originating in the territory of the other Party that are provided for in each of the items designated as staging category D in each Party's Schedule contained in Annex 401.2 shall continue to receive the existing duty-free treatment indicated therein for such goods.

5. At the request of either Party, the Parties shall consult to consider acceleration of the elimination of the duty on specific items in the Schedule of each Party. An agreement between the Parties on such accelerated implementation of duty-free treatment shall be considered a part of this Agreement and the accelerated implementation schedule for an item shall replace and supersede the prior implementation schedule contained in this Agreement for the item.

6. Canada shall continue to exempt from customs duties certain machinery and equipment considered "not available" from Canadian production and certain repair and replacement parts originating in the territory of the United States of America, in accordance with Annex 401.6.

7. Canada shall not increase the rate of customs duty on goods originating in the territory of the United States of America that are set out in the Schedule of Statutory and Temporary Concessionary Provisions in the Canadian Tariff Schedule Converted to the Harmonized System, with the exception of the goods set out in Annex 401.7.

8. The United States of America shall not impose a customs duty on goods originating in the territory of Canada that were subject to a temporary suspension of the duty on October 3, 1987, and which are listed with a base rate of free in subchapter II of chapter 99 of the Schedule of the United States of America contained in Annex 401.2, except as noted in that subchapter and as listed in Annex 401.7.

Article 402: Rounding of Interim Rates

To simplify application of interim staged rates in the removal of duties in accordance with subparagraphs 2(b) and (c) of Article 401, such rates shall be rounded down, with the limited exceptions set out in each Party's Schedule in Annex 401.2, to the nearest 0.1 percent ad valorem or, if the rate of duty is expressed in monetary units, to the nearest 0.1 cent. In no case shall a rate be rounded up.

Article 403: Customs User Fees

1. Neither Party shall introduce customs user fees with respect to goods originating in the territory of the other Party.

2. Subject to paragraph 3, the United States of America may change the level of existing customs user fees.

3. The United States of America shall eliminate existing customs user fees on goods originating in the territory of Canada according to the following schedule:

a) with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the user fee shall be 80 percent of the user fee otherwise applicable on that date;

b) with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the user fee shall be 60 percent of the user fee otherwise applicable on that date;

c) with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the user fee shall be 40 percent of the user fee otherwise applicable on that date;

d) with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the user fee shall be 20 percent of the user fee otherwise applicable on that date; and

e) with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1994, there shall be no customs user fee.

Article 404: Drawback

1. Goods imported into the territory of a Party (including goods imported in bond or qualifying for benefit under a foreign trade zone, inward processing, or similar program) and subsequently exported to the territory of the other Party, or incorporated into, or directly consumed in the production of, goods subsequently exported to the territory of the other Party, shall be subject to the customs duties of the Party applicable to goods entered for consumption in the customs territory of that Party prior to their export to the territory of the other Party. Such duties shall not be reduced, eliminated or refunded by reason of such exportation, and their payment shall not be deferred upon such exportation.

2. The prohibition set out in paragraph 1 also applies where the imported goods are substituted by domestic or other imported goods

exported to the territory of the other Party, or incorporated into or directly consumed in the production of goods subsequently exported to the territory of the other Party.

3. Goods exported to the territory of the other Party from a foreign trade zone or similar area shall be subject to the applicable customs duties of the Party maintaining the foreign trade zone or similar area as though the goods were withdrawn for domestic consumption.

4. Paragraphs 1, 2 and 3 do not apply to:

a) goods under bond for transportation and exportation to the territory of the other Party or exported to the territory of the other Party in the same condition as when imported into the territory of the Party (testing, cleaning, repacking or inspecting the goods, preserving them in their same condition, or other like process, shall not, for the purposes of this Article, be a process that would change the condition of the goods);

b) goods deemed to be exported from the territory of a Party or goods incorporated into, or directly consumed in the production of, such goods, by reason of:

  i) delivery to a duty-free shop,

  ii) use as stores or supplies for ships or aircraft, or

  iii) use in joint undertakings of the Parties and that will subsequently become the property of the other Party; or

c) dutiable goods originating in the territory of the other Party that are imported into the territory of the Party and subsequently re-exported to the territory of the other Party, or are incorporated into, or directly consumed in the production of, goods subsequently exported to the territory of the other Party.

5. Paragraphs 1, 2 and 3 do not apply to a refund of customs duties imposed by a Party on particular goods imported into its territory and subsequently exported to the territory of the other Party, where that refund is granted by reason of the failure of such goods to conform to

sample or specification, or by reason of the shipment of such goods without the consent of the consignee.

6. Solely for the purposes of this Article, the term "customs duties" includes the charges referred to in subparagraphs (b), (d) and (e) in the definition of customs duties contained in Article 410.

7. Except as the Parties may agree to delay the application of this Article, this Article shall apply to customs duties imposed on imported goods that are:

a) exported to the territory of the other Party on or after January 1, 1994, or that are substituted by domestic or other imported goods exported to the territory of the other Party on or after January 1, 1994; or

b) incorporated into, or directly consumed in the production of, goods subsequently exported to the territory of the other Party on or after January 1, 1994, or that are substituted by domestic or other imported goods incorporated into, or directly consumed in the production of, goods exported to the territory of the other Party on or after January 1, 1994.

8. Unless otherwise agreed by the Parties, this Article shall not apply to:

a) imported citrus products; and

b) fabric not originating in the territory of either Party or both Parties and made into apparel that is subject to the most-favoured-nation tariff when exported to the territory of the other Party.

Article 405: Waiver of Customs Duties

1. Neither Party shall, after the later of June 30, 1988 or the date of approval of this Agreement by the Congress of the United States of America, introduce any new program, expand with respect to then-existing recipients or extend to any new recipient the application of a program existing prior to such date that waives otherwise applicable customs duties on any goods imported from any country, including the territory of the other Party, where the waiver is conditioned,

explicitly or implicitly, upon the fulfillment of performance requirements.

2. Neither Party shall, explicitly or implicitly, condition upon the fulfillment of performance requirements the continuation of any program existing on the date referred to in paragraph 1 that provides for the waiver of customs duties on any goods imported from any country, including the territory of the other Party, and entered or withdrawn from warehouse for consumption on or after January 1, 1998.

3. Whenever the other Party can show that a waiver or a combination of waivers of customs duties granted with respect to goods for commercial use by a designated person has an adverse impact on the commercial interests of a person of the other Party, or of a person owned or controlled by a person of the other Party that is located in the territory of the Party granting the waiver of customs duties, or on the other Party's economy, the Party granting the waiver either shall cease to grant it or shall make it generally available to any importer.

4. The provisions of paragraph 2 shall not apply with respect to the granting of waivers of customs duties conditioned, explicitly or implicitly, upon the fulfillment of performance requirements, to the manufacturers of automotive goods listed in Part One of Annex 1002.1 in accordance with the headnote to that Part. Nothing in this Agreement affects the rights of either Party under any agreement, other than this Agreement, with respect to the granting of such waivers of customs duties.

Article 406: Customs Administration

The Parties' respective Customs Administrations shall cooperate as specified in Annex 406 (Customs Administration).

Article 407: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties affirm their respective rights and obligations under the *General Agreement on Tariffs and Trade* (GATT) with respect to prohibitions or restrictions on bilateral trade in goods.

2. The Parties understand that the GATT rights and obligations affirmed in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum export-price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum import-price requirements.

3. In circumstances where a Party imposes a restriction on importation from or exportation to a third country of a good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of the other Party of such good of the third country; or

b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good be consumed within the territory of the other Party.

4. In the event that either Party imposes a restriction on imports of a good from third countries, the Parties, upon request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. The Parties shall eliminate the restrictions as set out in Annex 407.6.

Article 408: Export Taxes

Neither Party shall maintain or introduce any tax, duty, or charge on the export of any good to the territory of the other Party, unless such tax, duty, or charge is also maintained or introduced on such good when destined for domestic consumption.

Article 409: Other Export Measures

1. Either Party may maintain or introduce a restriction otherwise justified under the provisions of Articles XI:2(a) and XX(g), (i) and (j) of the GATT with respect to the export of a good of the Party to the territory of the other Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to the other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of a good to the other Party than the price charged for such good when consumed domestically, by means of any measure such as licences, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price which may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to the other Party or normal proportions among specific goods or categories of goods supplied to the other Party.

2. With respect to the implementation of the provisions of this Article, the Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to third countries.

Article 410: Definitions

For purposes of this Chapter:

consumed means transformed so as to qualify under the rules of origin set out in Chapter Three, or actually consumed;

Customs Administration means, in Canada, that part of the Department of National Revenue for which the Deputy Minister of National Revenue for Customs and Excise, or any successor thereof, is responsible, and, in the United States of America, the United States Customs Service, Department of the Treasury, or any successor thereof;

customs duty includes any customs or import duty and charge of any kind imposed in connection with the importation of goods, including any form of surtax or surcharge on imports, with the exception of:

a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT in respect of like domestic goods or in respect of goods from which the imported good has been manufactured or produced in whole or in part,
b) any antidumping or countervailing duty applied pursuant to either Party's domestic law consistent with the provisions of Chapter Nineteen,
c) fees or other charges in connection with importation commensurate with the cost of services rendered, subject to Article 403;
d) premiums offered or collected on imported goods arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff quotas, and
e) fees applied pursuant to section 22 of the United States *Agricultural Adjustment Act* of 1933, as amended, subject to the provisions of Chapter Seven (Agriculture);

existing customs duty means a duty, the rate of which is set out as the base rate for a tariff item in each Party's schedule contained in Annex 401.2;

performance requirement means a requirement that:

a) a given level or percentage of goods or services be exported,
b) domestic goods or services of the Party granting the waiver of customs duties be substituted for imported goods,
c) a person benefitting from the waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver of customs duties, or accord a preference to domestically produced goods or services, or
d) a person benefitting from the waiver of customs duties produce, in the territory of the Party granting the waiver of customs duties, goods or services with a given level or percentage of domestic content;

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum price requirements or any other means;

total export shipments means the total shipments from total supply to users located in the territory of the other Party;

total supply means shipments to domestic users and foreign users from:

a) domestic production,
b) domestic inventory, and
c) other imports as appropriate; and

waiver of customs duties means relief by any means from customs duties on goods imported into the territory of a Party.

Annex 401.2

A. Schedule of CANADA

attached

B. Schedule of the UNITED STATES OF AMERICA

attached

Annex 401.6

Machinery and Equipment

1. Canada shall continue to exempt from customs duties the machinery and equipment listed as "not available" from Canadian production in Column I of Schedule I of Appendix A to Memorandum D8-5-1 of March 11, 1987, published by the Department of National Revenue, Customs and Excise (the Memorandum), with the exception of the following (identified by the product code used in connection with such machinery and equipment in Column I of Schedule I of Appendix A to the Memorandum):

02 BC L.
02 BC M.
02 BC N.
02 BC P.
02 BC Q.
04 FE B.
04 FK ..
04 FN ..
07 CA ..
07 EC ..
07 FD ..
07 MA ..
07 LA ..
17 DH ..
18 B. ..
18 FD ..
41 CD A.
45 GB ..
59 BN ..
61 AC ..
61 AD ..
61 AE ..
61 AG ..
61 AH B.
61 DB A.
61 DF A.
61 DF B.
63 AS ..
69 D. ..
71 CD ..
71 JE A.
71 JE C.
71 JF C.

2. Canada shall also continue to exempt from customs duties repair and replacement parts for the machinery and equipment that it exempts from customs duties, as set out in paragraph 1, with the exception of repair and replacement parts listed as "available" from Canadian production in column II of Schedule I, or listed as not eligible for remission of customs duty in Schedule II, of Appendix A to the Memorandum.

3. Canada shall review, by January 1, 1989, for the purpose of exempting from customs duties, the machinery and equipment set out as exceptions in paragraph 1, as well as the machinery and equipment not listed as either "available" or "not available" in Schedule I of Appendix A to the Memorandum.

Annex 401.7

Treatment of Concessionary Duty Provisions

Canada

1. Canada may exempt the following goods (identified by the code for them in the Schedule of Statutory and Temporary Concessionary Provisions in the Canadian Tariff Schedule Converted to the Harmonized System) from the undertaking in paragraph 7 of Article 401:

1695
3175
4205
4210
4211
4212
4220
4225
4300
4305
4315
4380
4381
4382
4780
4865
5175
5180
5960
6235
6335
6340
6600
6650
6655
6850
6851
6852
6945
7520
7862
7866
7938

United States of America

2. The United States of America may exempt the following goods (identified by the code for them in the Harmonized System) from the undertaking in paragraph 8 of Article 401:

9902.2937	Terfenadine
9902.2938	Flecainide
9902.2939	Mepenzolate Bromide
9902.3808	Mixtures of Potassium
9902.3823	Mixtures of 5-Chloro-2-Methyl-4-Isothiazolin . . . magnesium nitrate

Annex 406

Customs Administration

A. Declaration of Origin

Imported Goods

1. Subject to paragraph 3, each Party may:

   a) require that an importer who represents that goods imported from the territory of the other Party meet the rules of origin set out in Chapter Three (Rules of Origin) make a written declaration to that effect and base such declaration on the exporter's written certification to the same effect;

   b) require that, upon request, such importer provide the Customs Administration of the Party with proof of the exporter's written certification of the origin of the goods; and

   c) make mandatory the declaration required by subparagraph (a) and the provision of proof thereof required by subparagraph (b), and may further provide that failure to comply with such mandatory requirements shall have the same legal consequences as a violation of its laws with respect to making a false statement or representation.

Exported Goods

2. Each Party shall:

   a) require that an exporter who certifies in writing that goods it exports to the territory of the other Party meet the rules of origin set out in Chapter Three provide, upon request, the Customs Administration of that Party with a copy of that certification; and

   b) make it unlawful to certify falsely that goods exported to the territory of the other Party meet the rules of origin set out in Chapter Three, and shall further provide that such unlawful act shall have the same legal consequences as a violation of its laws with respect to making a false statement or representation.

Exceptions

3. Either Party may provide for exemptions from compliance with paragraph 1.

B. Administration and Enforcement

Records and Audit

4. Each Party shall ensure that records are kept with respect to the goods subject to paragraphs 1 and 2, and shall ensure that such records are subject to whatever audit or other statutory requirements apply to importers' records.

Cooperation

5. In furtherance of their mutual interest in ensuring the effective administration of paragraphs 1 and 2, and in the prevention, investigation and repression of unlawful acts, the Parties shall cooperate fully in the enforcement of their respective laws in accordance with this Agreement and other treaties, agreements and memoranda of understanding between them.

C. Rules of Origin

Consultation on Uniform Application

6. The Parties, through their Customs Administrations, shall consult with each other concerning the uniform application of the principles set out in Chapter Three. Each Party shall make its precedential decisions applying these principles available to the other Party.

Appeals Relating to Origin

7. Each Party shall provide the same rights of review and appeal with respect to a decision relating to the origin of imported goods represented as meeting the requirements of Chapter Three as are provided with respect to the tariff classification of imported goods.

D. Flow of Trade

Facilitation

8. The Parties shall cooperate, to the extent possible, in customs matters in order to facilitate the flow of trade between them, particularly in matters relating to the collection of statistics with respect to the importation and exportation of goods, the harmonization of documents used in trade, and the exchange of information.

Notification and Consultation Prior to Major Changes

9. The Parties shall notify and consult with each other with respect to and, where possible, in advance of, major proposed changes in customs administration that would affect the flow of bilateral trade, such as:

a) the closing of a port or customs office;

b) the hours of service at a port or customs office;

c) the re-routing of the natural flow of trade;

d) resources, including personnel, facilities, and equipment, allocated to commercial processing and inspection;

e) trade documentation required by the Customs Administration or another agency of a Party;

f) customs procedures followed to implement the requirements of other agencies of a Party; and

g) the processing of travellers.

Annex 407.6
Elimination of Quantitative Restrictions

1. Canada shall eliminate, as of January 1, 1989, the embargo (set out in Tariff Item 99216-1 of Schedule C of the *Customs Tariff*, or its successor) on used or second-hand aeroplanes and aircraft of all kinds.

2. The United States of America shall eliminate, as of January 1, 1993, the embargo set out in 19 U.S.C. § 1305 on any

a) lottery ticket,

b) printed paper that may be used as a lottery ticket, or

c) advertisement,

for a United States lottery, printed in Canada.

Chapter Five: National Treatment

This chapter incorporates the fundamental national treatment obligation of the GATT into the Free-Trade Agreement. This means that once goods, have been imported into either country, they will not be the object of discrimination. Such an obligation is an essential part of any agreement eliminating trade barriers since it prevents their replacement by internal measures favouring domestic goods over imports. If such a provision were not part of the agreement, exporters in either country would have no guarantee of equal treatment.

The practical effect of this chapter is to require that internal taxes, such as sales or excise taxes, cannot be higher on imported goods than on domestic goods and health and safety standards cannot be more rigorous for imported goods than for domestic goods. In other words, the obligation prevents either country from imposing internal taxes such as excise or sales taxes, regulations respecting matters such as health and safety standards, laws respecting sale, purchase and use in a manner to discriminate against imported products. It is thus a guarantee that goods will be free of discrimination and will allow producers, traders, investors, farmers and fishermen to plan and invest with confidence.

National treatment does not mean that imported goods have to be treated in the same way in the foreign market as they are in their country of origin. For example, Canada can prohibit or restrict the sale of imported firearms so long as the sale of domestically produced firearms is also prohibited or restricted. Moreover, all goods, imported or domestic, must continue to meet Canadian requirements for bilingual labelling.

This chapter makes more explicit the GATT national treatment obligation to measures adopted by provinces or states. This means that a province or state cannot discriminate in respects of measures falling within its jurisdiction against imported products.

Chapter Five

National Treatment

Article 501: Incorporation of GATT Rule

1. Each Party shall accord national treatment to the goods of the other Party in accordance with the existing provisions of Article III of the *General Agreement on Tariffs and Trade* (GATT), including its interpretative notes, and to this end the provisions of Article III of the GATT and its interpretative notes are incorporated into and made part of this Part of this Agreement.

2. For purposes of this Agreement, the provisions of this Chapter shall be applied in accordance with existing interpretations adopted by the Contracting Parties to the GATT.

Article 502: Provincial and State Measures

The provisions of this Chapter regarding the treatment of like, directly competitive or substitutable goods shall mean, with respect to a province or state, treatment no less favourable than the most favourable treatment accorded by such province or state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

Chapter Six: Technical Barriers

The right to maintain regulations to protect human, animal and plant life, the environment or for a variety of other purposes is a sovereign issue for each country to decide. Such regulations for health, safety, environmental, national security and consumer protection reasons, however, can constitute severe barriers to trade unless there are rules to prevent their explicit use to impede trade. Technical regulations can be highly protectionist trade measures.

In the Tokyo Round of Multilateral Trade Negotiations, an Agreement on Technical Barriers to Trade was reached which provides that technical regulations and standards including packaging and labelling requirements and methods for certifying conformity should not create unnecessary barriers to trade. No country is prevented from taking measures to ensure protection of human, animal or plant life or other measures so long as they are not applied to cause arbitrary or unjustifiable discrimination between imported or domestic goods.

In this chapter, Canada and the United States affirm their obligations under the GATT agreement respecting federal government measures affecting industrial products (agricultural and fish standards are covered in Chapter Seven).

This means that the two federal governments have agreed to avoid the use of standards-related measures as unnecessary obstacles to trade. Standards-related measures are defined to include specifications and regulations, standards and rules for certification systems that apply to goods, and processes and production methods. For example, the federal government can require that children's pyjamas be manufactured from fire-proof material, but it must impose this requirement on both imported and domestically produced pyjamas. Nothing in the Agreement prevents Canada from requiring bilingual labelling of goods, as long as both domestic and imported goods meet the same requirement.

The two governments will endeavour to make their respective standards-related measures more compatible to reduce the obstacles to trade and the costs of exporting which arise from having to meet different standards. A particular problem with plywood standards is addressed in Chapter Twenty. Many standards-related measures are developed by private organizations in both Canada and the United

States (such as the Canadian Standards Association or the Underwriters Laboratory) and the two governments will encourage these organizations to continue to work toward achieving greater compatibility in the standards they establish.

The methods by which products are tested for conformity with standards can, in themselves, constitute a barrier to trade. Hence, the two countries have agreed to recognize each others' laboratory accreditation systems and will not require that testing and inspection agencies and certification bodies be located, or make decisions within its territory in order to gain accreditation.

The chapter requires that, except in urgent cases, full texts of proposed federal standards-related measures be provided to the other country and that at least 60 days be allowed for those who would be affected to comment on any proposed federal measure before the measure takes effect.

Article 608 provides for further negotiations respecting the compatibility of standards-related measures, accreditation and the acceptance of test data.

Chapter Six

Technical Standards

Article 601: Scope

1. The provisions of this Chapter shall apply to technical standards related to goods other than agricultural, food, beverage and certain related goods as defined in Chapter Seven (Agriculture).

2. The provisions of this Chapter shall not apply to any measure of a provincial or state government. Accordingly, the Parties need not ensure the observance of these provisions by state or provincial governments.

Article 602: Affirmation of GATT Agreement

The Parties affirm their respective rights and obligations under the GATT *Agreement on Technical Barriers to Trade.*

Article 603: No Disguised Barriers to Trade

Neither Party shall maintain or introduce standards-related measures or procedures for product approval that would create unnecessary obstacles to trade between the territories of the Parties. Unnecessary obstacles to trade shall not be deemed to be created if:

a) the demonstrable purpose of such measure or procedure is to achieve a legitimate domestic objective; and

b) the measure or procedure does not operate to exclude goods of the other Party that meet that legitimate domestic objective.

Article 604: Compatibility

1. To the greatest extent possible, and taking into account international standardization activities, each Party shall make compatible its standards-related measures and procedures for product approval with those of the other Party.

2. Each Party shall, upon request of the other Party, take such reasonable measures as may be available to it to promote the objectives

of paragraph 1 with respect to specific standards-related measures that are developed or maintained by private standards-related organizations within its territory.

Article 605: Accreditation

1. Each Party shall provide for recognition of the accreditation systems for testing facilities, inspection agencies and certification bodies of the other Party.

2. Neither Party shall require as a condition for accreditation that testing facilities, inspection agencies or certification bodies be located or established in or make decisions within its territory.

3. Either Party may charge a reasonable fee, limited in amount to the approximate cost of the services rendered, to testing facilities, inspection agencies or certification bodies seeking accreditation, provided that such fees shall be charged on an equal basis to the testing facilities, inspection agencies or certification bodies of either Party. Where a Party charges such fees during the transition period, they need not be charged to domestic testing facilities, inspection agencies or certification bodies.

Article 606: Acceptance of Test Data

Each Party shall provide, upon request, a written explanation whenever any of its federal government bodies is unable to accept from bodies located in the territory of the other Party test results that are needed to obtain certification or product approval.

Article 607: Information Exchange

1. Each Party shall promptly provide the other Party with full texts of proposed federal government standards-related measures and product approval procedures published in official journals in sufficient time to provide persons of the other Party with at least 60 days to develop comments and discuss them with the appropriate regulating authority prior to submitting the comments.

2. Either Party may, in urgent circumstances where delay would frustrate the achievement of a legitimate domestic objective, proceed without prior provision of a text under paragraph 1. In such instances, the texts shall be provided expeditiously after issuance in final form.

3. Where feasible, each Party shall:

a) notify the other Party of proposed standards-related measures of state and provincial authorities that may significantly affect bilateral trade; if such notice cannot be provided in advance, it should be provided as expeditiously as possible;

b) provide a full text of such proposed state and provincial standards-related measures;

c) take such reasonable steps as may be available to it to provide persons of the other Party with information that would facilitate their provision of comments to, and discussions of comments with, appropriate state or provincial authorities; and

d) take such reasonable steps as may be available to it to notify the other Party of standards-related measures of major national private organizations.

Article 608: Further Implementation

The Parties shall, as may be appropriate to further the objectives of this Chapter, undertake additional negotiations with respect to:

a) making compatible standards-related measures and product approval procedures;

b) accreditation; and

c) acceptance of test data.

Article 609: Definitions

For purposes of this Chapter:

accreditation means a formal recognition of competence to carry out specific tests or specific types of tests, including authorization to certify conformity with standards or technical specifications, by means of a certificate of conformity or mark of conformity;

legitimate domestic objective means an objective whose purpose is to protect health, safety, essential security, the environment, or consumer interests;

make compatible means the process by which differing standards, technical regulations or certification systems of the same scope which have been approved by different standardizing bodies are recognized as being either technically identical or technically equivalent in practice;

product approval means a federal government declaration that a set of published criteria has been fulfilled and therefore that goods are permitted to be used in a specific manner or for a specific purpose;

standards-related measures include technical specifications, technical regulations, standards and rules for certification systems that apply to goods, and processes and production methods; and

testing facility means a facility that inspects, measures, examines, tests, calibrates or otherwise determines the characteristics or performance of materials or goods.

Chapter Seven: Agriculture

Canadian farmers export almost $3 billion in agricultural products to the United States and sought conditions which would make their access to the U.S. market both more open and more secure. At the same time, they did not want to impair either existing marketing systems for dairy and poultry products or the right to implement new supply management programs and import controls in accordance with our international obligations.

The government thus had three objectives in the agricultural area: to improve access for farm products; to make that access more secure; and to preserve Canada's agricultural policy instruments. The Agreement meets all three objectives: there is an important package of trade liberalizing measures; agricultural products will benefit from the increased security of access flowing from the arrangements on dispute settlement; and nothing in the Agreement will in any way affect the right of the federal government and the provinces to introduce and maintain programs to protect and stabilize farm incomes.

The principal trade liberalizing elements agreed in agriculture are:

- *Article 701: prohibition of export subsidies on bilateral trade. This marks the first time that any two governments have agreed to prohibitions on export subsidies in the agricultural sector and marks an important signal to others around the world;*
- *Article 701: elimination of Canadian Western Grain Transportation rail subsidies on exports to the United States shipped through Canadian west coast ports; the provision does not affect shipments through Thunder Bay or exports to third countries through west coast ports;*
- *Articles 401 and 702: the phased elimination of all tariffs over a period of ten years (Canada is allowed to restore temporarily tariffs on fresh fruits and vegetables for a 20-year period under depressed price conditions in order to give Canada's horticultural industry an opportunity to adjust to more open trading conditions). This snapback provision applies only if the average acreage under cultivation for that product is constant or declining. Acreage converted from wine-grape cultivation is not included in this calculation;*

- *Article 704: mutual exemption from restrictions under meat import laws, thus ensuring free trade in beef and veal. Canadian beef and veal producers have in the past found their exports limited as the U.S. triggered its meat import restrictions or sought voluntary export restraints. Both countries have agreed to consult and take measures to avoid diversion should either country apply its meat import law against third countries;*

- *Article 705: elimination of Canadian import licenses for wheat, barley and oats and their products when U.S. grain support levels become equal to Canadian grain support levels. Both countries retain the right to impose or re-impose restrictions on grains and grain products if imports increase significantly as a result of substantial change in grain support programs. Annex 705.2 sets out the method for calculating support levels;*

- *Article 706: the Canadian global import quotas on chicken, turkey and eggs have been set at average levels of actual imports over the past five years;*

- *Article 707: an exemption for Canada from any future quantitative import restrictions on products containing ten percent or less sugar. The U.S. enjoys a waiver under the GATT to impose restrictions if imports are interfering with U.S. price support programs. Without this exemption, further products could be included;*

- *Article 708: regulatory barriers resulting from technical regulations, the kind which in the past have frustrated the export of Canadian pork products, have been reduced. Over the next few years, both countries will seek to harmonize such technical regulations. As part of this Agreement, the U.S. will maintain an "open border policy" for meat inspection which will now be limited to occasional spot checks to ensure compliance with inspection requirements. Additionally, the United States has agreed to recognize the term canola oil as a trade name for rapeseed; and*

- *Article 710: GATT rights and obligations (including Article XI) are retained for all agricultural trade not specifically dealt with in the Agreement. For example, Canadian dairy farmers will continue to benefit from supply management programs since* *these are not affected by the Agreement and are consistent with Canada's GATT obligations.*

Finally, the two governments agreed that some of the most pressing problems in the agricultural area go beyond Canada and the United States and will need the co-operation of all countries. For example, the stiff competition for grain export markets leading to ruinous export subsidies cannot be resolved solely on a bilateral basis. The two governments have, therefore, agreed to consult more closely with each other; to take account of each other's export interests when using export subsidies on sales to third markets; and to work together in the GATT to further improve and enhance trade in agriculture (Articles 701 and 709).

Canada's farmers will make real gains. By the end of the next decade, those agricultural and food products such as meat and livestock, grains and oilseeds, and potatoes, which we produce in abundance and which form the heart of our farm exports, will be able to compete on an equal footing in the huge American market without the burden of tariffs and other barriers at the border. At the same time, marketing systems, farm income stabilization and price support programs remain unimpaired by the Agreement.

Chapter Seven

Agriculture

Article 701: Agricultural Subsidies

1. The Parties agree that their primary goal with respect to agricultural subsidies is to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade, and the Parties agree to work together to achieve this goal, including through multilateral trade negotiations such as the Uruguay Round.

2. Neither Party shall introduce or maintain any export subsidy on any agricultural goods originating in, or shipped from, its territory that are exported directly or indirectly to the territory of the other Party.

3. Neither Party, including any public entity that it establishes or maintains, shall sell agricultural goods for export to the territory of the other Party at a price below the acquisition price of the goods plus any storage, handling or other costs incurred by it with respect to those goods.

4. Each Party shall take into account the export interests of the other Party in the use of any export subsidy on any agricultural good exported to third countries, recognizing that such subsidies may have prejudicial effects on the export interests of the other Party.

5. Canada shall exclude from the transport rates established under the *Western Grain Transportation Act* agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States of America.

Article 702: Special Provisions for Fresh Fruits and Vegetables

1. a) Notwithstanding Article 401, for a period of 20 years from the entry into force of this Agreement, each Party reserves the right to apply a temporary duty on fresh fruits or vegetables originating in the territory of the other Party and imported into its territory, when

   i) for each of five consecutive working days the import price of such fruit or vegetable for each such day is below 90 percent of the average monthly import price, for the month in which that day falls, over the preceding five years, excluding the years with the highest and lowest average monthly import price; and

   ii) the planted acreage in the importing Party for the particular fruit or vegetable is no higher than the average acreage over the preceding five years, excluding the years with the highest and lowest acreage.

b) The temporary duty referred to in subparagraph (a) may be applied on a regional or national basis, and the import prices and planted acreage will then be determined on a regional or national basis, as appropriate.

c) For purposes of calculating the planted acreage referred to in subparagraph (a)(ii), any acreage increase attributed directly to a reduction in wine grape planted acreage existing on October 4, 1987 shall be excluded.

2. Any temporary duty applied under this Article together with any other duty in effect for the particular fresh fruit or vegetable shall not exceed the lesser of:

a) the applicable most-favoured-nation (MFN) rate of duty that was in effect for the particular fresh fruit or vegetable prior to the date of entry into force of this Agreement determined with reference to the same season in which the temporary duty is applied; or

b) the MFN rate of duty in effect for imports of that particular fresh fruit or vegetable at the time the temporary duty is applied.

3. Any temporary duty shall only be applied either once per twelve-month period per good nationally or once per twelve-month period per good in each region. If a temporary duty is initially applied in one or more regions, any later application in a different region during that twelve-month period shall be based on a later five consecutive working day period under subparagraph 1(a)(i). No

temporary duty shall apply to goods in transit at the time the duty is applied.

4. Such a temporary duty shall be removed when, for a period of five consecutive working days, the representative F.O.B point of shipment price in the exporting Party exceeds 90 percent of the average monthly import price referred to in subparagraph 1(a)(i), adjusted to an F.O.B point of shipment price, if necessary, and in any event shall be removed after 180 days.

5. Prior to the application of the temporary duty, the importing Party shall provide to the exporting Party two working days notice and an opportunity to consult during those two working days.

6. No Party may introduce or maintain any action under this Article on a particular good during such time as an action is maintained under Chapter Eleven (Emergency Action) on the same good.

7. For purposes of this Article, fresh fruit or vegetable shall mean any good classified within the following tariff headings of the Harmonized System (HS):

HS Tariff Heading	Description
07.01	potatoes, fresh or chilled
07.02	tomatoes, fresh or chilled
07.03	onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled
07.04	cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled
07.05	lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled
07.06	carrots, salad beets or beetroot, salsify, celeriac, radishes and similar

	edible roots (excluding turnips), fresh or chilled
07.07	cucumbers and gherkins, fresh or chilled
07.08	leguminous vegetables, shelled or unshelled, fresh or chilled
07.09	other vegetables (excluding truffles), fresh or chilled
08.06.10	grapes, fresh
08.08.20	pears and quinces, fresh
08.09	apricots, cherries, peaches (including nectarines), plums and sloes, fresh
08.10	other fruit (excluding cranberries and blueberries), fresh.

8. The Parties shall, upon the request of either Party, consult concerning removal of any temporary duty applied under paragraph 1.

9. For purposes of this Article, a region in Canada means:

a) British Columbia, Alberta, Saskatchewan, Manitoba, and that part of Ontario west of 89° 19' longtitude (Thunder Bay);

b) Quebec and that part of Ontario east of 89° 19' longtitude (Thunder Bay); or

c) New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

Article 703: Market Access for Agriculture

In order to facilitate trade in agricultural goods, the Parties shall work together to improve access to each other's markets through the elimination or reduction of import barriers.

Article 704: Market Access for Meat

1. Neither Party shall introduce, maintain or seek any quantitative import restriction or any other measure having equivalent effect on meat goods originating in the territory of the other Party except as otherwise provided in this Agreement.

2. If a Party imposes any quantitative import restriction on meat goods from all third countries, or negotiates agreements limiting exports from third countries, and if the other Party does not take equivalent action, then the first Party may impose quantitative import restrictions on meat goods originating in the territory of the other Party only to the extent and only for such period of time as is sufficient to prevent frustration of the action taken on imports of the meat goods from third countries. The Party contemplating the action shall notify the other Party and provide an opportunity to consult prior to taking action pursuant to this paragraph.

Article 705: Market Access for Grain and Grain Products

1. Commencing at such time as the level of government support for any of the grains wheat, oats, or barley in the United States of America becomes equal to or less than the level of government support for that grain in Canada, Canada shall eliminate any import permit requirements for wheat and wheat products, oats and oat products, or barley and barley products, as the case may be, originating in the territory of the United States of America, except that Canada may require that the grain be:

a) accompanied by an end-use certificate which has been completed by the importer of record declaring that it is imported for consumption in Canada and is consigned directly to a milling, manufacturing, brewing, distilling or other processing facility for consumption at that facility;

b) denatured if for feed use; or

c) accompanied by a certificate issued by Agriculture Canada, or its successors, if for seed use.

2. The Canadian Grain Commission, or its successors, shall be responsible for monitoring compliance with subparagraphs 1(a) and

(b) and shall freely provide the end-use certificate required in subparagraph 1(a).

3. For purposes of paragraph 1, wheat, oat and barley products shall be defined as processed or manufactured substances which contain alone or in combination more than 25 percent by weight of such grain or grains. Any grain for which import permit requirements have been eliminated in accordance with paragraph 1 shall be excluded from this definition.

4. The method for calculating the level of government support referred to in paragraph 1 is set out in Annex 705.4.

5. Each Party shall, for purposes of restricting the importation of a grain or of a grain product due to its content of that grain, retain the right, to the extent consistent with other provisions of this Agreement, to introduce or, where they have been eliminated, reintroduce quantitative import restrictions or import fees on imports of such grain or grain products originating in the territory of the other Party if such imports increase significantly as a result of a substantial change in either Party's support programs for that grain. For purposes of this paragraph, grain means wheat, oats, barley, rye, corn, triticale and sorghum.

Article 706: Market Access for Poultry and Eggs

If Canada maintains or introduces quantitative import restrictions on any of the following goods, Canada shall permit the importation of such goods as follows:

a) the level of global import quota on chicken and chicken products, as defined in Annex 706, for any given year shall be no less than 7.5 percent of the previous year's domestic production of chicken in Canada;

b) the level of global import quota on turkey and turkey products, as defined in Annex 706, for any given year shall be no less than 3.5 percent of that year's Canadian domestic turkey production quota; and

c) the level of global import quotas on eggs and egg products for any given year shall be no less than the following percentages of the previous year's Canadian domestic shell egg production:

i) 1.647 percent for shell eggs;

ii) 0.714 percent for frozen, liquid and further processed eggs; and

iii) 0.627 percent for powdered eggs.

Article 707: Market Access for Sugar-Containing Products

The United States of America shall not introduce or maintain any quantitative import restriction or import fee on any good originating in Canada containing ten percent or less sugar by dry weight for purposes of restricting the sugar content of such good.

Article 708: Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods

1. Consistent with the legitimate need for technical regulations and standards to protect human, animal and plant life and to facilitate commerce between the Parties, the Parties shall seek an open border policy with respect to trade in agricultural, food, beverage and certain related goods and shall be guided in the regulation of such goods and in the implementation of this Article and the Schedules contained in Annex 708.1 by the following principles:

a) to harmonize their respective technical regulatory requirements and inspection procedures, taking into account appropriate international standards, or, where harmonization is not feasible, to make equivalent their respective technical regulatory requirements and inspection procedures;

b) to apply any import or quarantine restriction on the basis of regional rather than national distribution of diseases or pests in the territory of the exporting Party, where such diseases or pests are distributed regionally rather than nationally;

c) to establish equivalent accreditation procedures for inspection systems and inspectors;

d) to establish reciprocal training programs and, where appropriate, to utilize each other's personnel for testing and inspection of agricultural, food, beverage and certain related goods; and

e) to establish, where possible, common data and information requirements for submissions relating to the approval of new goods and processes.

2. The Parties shall, with respect to agricultural, food, beverage and certain related goods:

a) work toward the elimination of technical regulations and standards that constitute, and prevent the introduction of technical regulations and government standards that would constitute, an arbitrary, unjustifiable or disguised restriction on bilateral trade;

b) exchange information, subject to considerations of confidentiality, related to technical regulations, standards and testing; and

c) notify and consult with each other during the development or prior to the implementation or change in the application of any technical regulation or government standard that may affect trade in such goods.

3. Where, for agricultural, food, beverage and certain related goods other than animals:

a) the Parties have harmonized or accepted the equivalence of each other's inspection systems, certification procedures or testing requirements, and

b) the exporting Party has, pursuant to such systems, procedures or requirements, determined or certified, as the case may be, that such goods meet the standards or technical regulations of the importing Party,

the importing Party may examine such goods imported from the territory of the exporting Party only to ensure that (b) has occurred. This provision shall not preclude spot checks or similar verifying measures necessary to ensure compliance with the importing Party's standards or technical regulations provided that such spot checks or similar verifying measures, including any conducted at the border, are conducted no more frequently than those conducted by the importing Party under similar circumstances with respect to its goods.

4. To further the implementation of this Article and the Schedules contained in Annex 708.1:

a) the Parties shall establish the following working groups, each with equal representation from each Party:

   i) Animal Health,
   ii) Plant Health, Seeds and Fertilizers,
   iii) Meat and Poultry Inspection,
   iv) Dairy, Fruit, Vegetable and Egg Inspection,
   v) Veterinary Drugs and Feeds,
   vi) Food, Beverage and Colour Additives and Unavoidable Contaminants,
   vii) Pesticides, and
   viii) Packaging and Labelling of Agricultural, Food, Beverage and Certain Related Goods for Human Consumption;

b) these working groups shall:

   i) meet at the request of either Party, but in any event not less than once a year unless the Parties otherwise agree, to further the implementation of this Article and the Schedules contained in Annex 708.1 or to address other issues as they arise, and

   ii) inform the joint monitoring committee of their work; and

c) the Parties shall establish a joint monitoring committee, with equal representation from each Party, which shall meet at least annually and which shall:

   i) monitor the progress of the working groups to ensure the timely implementation of this Article and the Schedules contained in Annex 708.1, and

   ii) report the progress of the working groups to the Minister of Agriculture for Canada and the Secretary of Agriculture for the United States of America and such other Ministers or Cabinet-level officers as may be appropriate and to the

Commission referred to in Chapter Eighteen (Institutional Provisions).

Article 709: Consultations

The Parties shall consult on agricultural issues semi-annually and at such other times as they may agree.

Article 710: International Obligations

Unless otherwise specifically provided in this Chapter, the Parties retain their rights and obligations with respect to agricultural, food, beverage and certain related goods under the *General Agreement on Tariffs and Trade* (GATT) and agreements negotiated under the GATT, including their rights and obligations under GATT Article XI.

Article 711: Definitions

For purposes of this Chapter:

agricultural goods means all goods classified within chapters 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 24 of the Harmonized System and all goods classified within the following specific tariff headings of the Harmonized System:
05.02 to 05.11.10 inclusive
05.11.99
16.01
16.02
16.03 (extracts and juices of meats only)
22.01
22.02
22.09
23.01.10
23.02 to 23.09 inclusive
33.01
33.02
35.01 to 35.05 inclusive
40.01
41.01 to 41.03 inclusive
43.01
51.01 to 51.05 inclusive
52.01 to 52.03 inclusive

53.01 to 53.05 inclusive;

agricultural, food, beverage and certain related goods means all agricultural goods, all goods classified within chapter 3 of the Harmonized System, and all goods classified within the following specific tariff headings of the Harmonized System:

16.03 (other than extracts and juices of meat)
16.04 to 16.05 inclusive
22.03 to 22.08 inclusive
23.01.20
29.36
29.37
29.40 to 29.42 inclusive
30.01 to 30.04 inclusive
31.01 to 31.05 inclusive
32.03
32.04 (food, drug or cosmetic dyes and preparations only)
38.08
39.17.10
44.01 to 44.18 inclusive;

animal means any living being other than a human or a plant;

equivalent means having the same effect;

export subsidy means a subsidy that is conditional upon the exportation of agricultural goods. An illustrative list of such export subsidies is found in paragraphs (a) to (l) of the Annex to the *Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;*

harmonization means making identical;

import fee means a fee on imports, including a fee applied pursuant to Section 22 of the United States *Agricultural Adjustment Act* of 1933, as amended, but excluding a customs duty as defined in Chapter Four (Border Measures);

import price means the value for imports into a Party determined for customs purposes by the customs authorities in that Party, except that, in the case of imports sold on a consignment basis, a Party may use the price reported for such sales adjusted to the same pricing basis as the value determined for customs purposes;

meat goods means meat of cattle (including veal), goats, and sheep (except lambs), whether fresh, chilled or frozen;

standard means a technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not mandatory;

sugar means sugar derived from sugar cane or sugar beets;

technical regulation means a technical specification, including the applicable administrative provisions, with which compliance is mandatory; and

technical specification means a specification contained in a document that lays down characteristics of a good such as levels of quality, performance, safety or dimensions. It may include, or deal exclusively with, terminology, symbols, testing and test methods, packaging, marking or labelling requirements as they apply to a good.

Annex 705.4

Levels of Government Support for Wheat, Oats and Barley

I. Formula and Rules for Computation

1. This Annex shall apply to each of the grains wheat, oats and barley until such time as import permit requirements have been eliminated for that grain pursuant to Article 705.

2. This Annex shall apply only to the calculation referred to in Article 705 and shall not be construed as a statement by either Party of the support it provides for any other purpose.

3. For purposes of paragraph 1 of Article 705, where the level of government support in a Party for wheat, oats or barley is compared to the level of government support in the other Party for that grain, the level of government support in a Party shall be the average of the percentages, computed in accordance with paragraph 4, for the two most recent crop years for which data are available.

4. Government support for wheat, oats or barley for a crop year shall be determined in accordance with the following formula, expressed as a percentage:

$$\text{Government Support} = \frac{\text{Total Government Support}}{\text{Adjusted Producer Value}}$$

where:

Adjusted Producer Value means the value of production for wheat, oats or barley for that crop year plus direct government payments for that crop year;

Direct Government Payments means payments that are directly made to producers of wheat, oats or barley and that are associated with the production of that grain for that crop year, excluding any such payment to reduce the costs of production;

Total Government Support means all government programs or other means of government support directed towards affecting the income of producers of wheat, oats or barley from that grain for that crop year.

5. For purposes of Article 705, Schedules 1 and 2 set forth all government programs and other means of providing support for wheat, oats or barley as of October 4, 1987 and the method for computing the levels of government support as of that date.

6. The computation referred to in paragraph 5 may be adjusted to reflect modifications to government programs or means of support, new programs or means of support, and the availability of new types of data.

7. a) Where government support is measured on the basis of a calendar year and cannot be attributed to a crop year, it shall be attributed to the crop year beginning in that calendar year.

   b) Where government support is measured on the basis of a fiscal year and cannot be attributed to a crop year, it shall be attributed:

      i) for Canada, to the crop year beginning in that fiscal year;

      ii) for the United States of America, to the crop year ending in that fiscal year.

   c) All government expenditures shall exclude user contributions.

8. For purposes of this Annex, government data published or otherwise made officially available shall be used, unless clearly inappropriate.

9. All computations shall be done on the basis of the currency of the Party providing support.

II. Institutional Procedures

10. The Parties shall establish a Working Group with three representatives from each Party.

11. The Working Group shall:

   a) exchange information related to government programs for wheat, oats or barley; and

   b) discuss the computation of the level of government support in each Party for wheat, oats or barley.

12. Each Party shall, by January 1 of each year unless the Parties otherwise agree, forward to the other Party all available relevant data for the computation of the forwarding Party's level of support for wheat, oats and barley for the two most recent crop years for which data are available. Each Party shall forward to the other Party all other relevant data when available.

13. Each Party shall, by April 1 of each year unless the Parties otherwise agree, determine its level of support for wheat, oats and barley pursuant to paragraph 3 and immediately forward such determination and supporting computations to the other Party.

14. The Parties shall, upon request of either Party, consult regarding such determination.

15. Each Party shall notify the other Party of its acceptance or rejection of the other Party's determination within 30 days of receipt of such determination.

16. If a Party does not accept the other Party's determination, either Party may refer the matter to an arbitration panel pursuant to Article 1806.

17. The panel shall be established upon the date of such referral and shall establish its own rules and procedure.

18. The panel shall be appointed pursuant to paragraph 3 of Article 1807.

19. The panel shall issue its written decision within 30 days of the date the chairman is appointed. The Parties mutually agree that such decision shall be binding.

Schedule 1

United States Government Support Programs

A. Direct Payments

1. Payments of the Commodity Credit Corporation (CCC)

Support from payments made by CCC to wheat, oats, and barley producers pursuant to the *Agricultural Act of 1949*, as amended, consists of any deficiency, disaster and paid land diversion payments for that crop. Support is computed as the total amount of payments for wheat, oats or barley for that crop year made in cash, commodities and the total face value of any payments made in certificates.

2. CCC Storage Payments: Farmer-Owned Reserve Program and Special Producer Loan Storage Program

Under the Farmer-Owned Reserve (FOR) Program and Special Producer Loan Storage Program, CCC provides support by paying producers for storing their own commodities. Support from these programs for a crop year is the total amount of payments, computed for each month in the crop year in accordance with the following formula:

$$\left[\frac{1}{12} \times A \times B\right] + \left[\frac{1}{12} \times C \times D\right]$$

where:

A = the annual storage payment rate for wheat, oats or barley in the Farmer-Owned Reserve Program
B = the amount of wheat, oats or barley in the Farmer-Owned Reserve Program for that month
C = the annual storage payment rate for wheat, oats or barley in the Special Producer Loan Storage Program
D = the amount of wheat, oats or barley in the Special Producer Loan Storage Program for that month.

3. Conservation Reserve Program

The support provided for a crop year by the Conservation Reserve Program (CRP) is one-half of the total annual rental payments made pursuant to the CRP by CCC for acreage taken out of production for wheat, oats or barley.

4. Acreage Reduction Program

The support provided to producers of wheat, oats or barley is adjusted to take account of income foregone from reduced production as a result of the acreage reduction program. The support is reduced by the income foregone for a crop year, computed in accordance with the following formula:

$$(0.9 \times A \times B \times C) - (0.9 \times A) \times (D - E)$$

where:

A = acreage idled under the acreage reduction program
B = yield per acre on idled acreage in bushels

where:

$$B = \frac{\left[(G + 0.85 \times A) \times \left(H - \frac{0.85 \times A \times J}{I}\right)\right] - F}{0.85 \times A}$$

and

F = total quantity produced in bushels
G = total acreage harvested
H = United States average yield per harvested acre in bushels per acre
I = 10 million for wheat and 1 million for barley or oats
J = 1.1 for wheat, 1 for barley, and 1.2 for oats
C = export price in dollars per bushel

where:

$$C = K - \frac{L}{M}$$

and

K = season average farm price in dollars per bushel

L = total value of Export Enhancement Program bonuses for wheat and wheat products, oats and oat products, or barley and barley products in dollars

M = total quantity of wheat, oats or barley exported as grain and the grain equivalent of wheat, oat or barley products exported in bushels

or

if L = 0, then C = K

D = national average variable cash expenses per acre as reported by the Economic Research Service in dollars

E = expenses incurred to maintain conserving uses, deemed to be $15 per acre for wheat and $20 per acre for barley and oats.

Support shall only be adjusted when the income foregone, computed in accordance with this formula, exceeds zero.

5. Certificate Premiums and Discounts

CCC generic certificates provide support in addition to the face value of the certificates to the extent that producers obtain a premium for the certificates in the market above their face value. In the same manner, support provided by certificates would be reduced to the extent that certificate values are discounted in the market. The support for a crop year is computed in accordance with the following formula:

$A \times (B - C)$

where:

A = the weighted average premium or discount for the crop year

B = the total face value of generic certificates issued to wheat, oats or barley producers for the programs specified in paragraph A.1 for that crop year

C = the total face value of generic certificates returned to CCC by producers for cash.

For purposes of paragraph 5, the average monthly premium or discount shall be derived from the most representative survey available of premiums or discounts realized in the market and shall be weighted by the monthly value of total certificates exchanged for CCC commodities.

B. Other Support

6. CCC Loan Forfeiture Benefits

The forfeiture to CCC on a non-recourse basis of wheat, oats or barley, pledged as collateral for a commodity loan, provides support to the extent that the price paid by CCC for the grain exceeds the market price of that grain. Support for a crop year is computed by multiplying the quantity of grain forfeited by the difference between the season average farm price for the grain and the unit value of CCC collateral acquisitions of that grain.

7. Price Enhancing Aspects of Government Programs

Government acreage control programs, inventory actions, import tariffs on wheat, oats or barley, and export programs provide support to the extent that they enhance prices received by producers in the domestic market above the prices received on the world market. The price enhancing effect is measured by the difference between the season average farm price for the grain and the world price for that grain. The support for a crop year for wheat, oats or barley is computed in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A = total value of Export Enhancement Program (EEP) bonuses for wheat, oats or barley
B = volume of exports for wheat, oats or barley
C = volume of production for wheat, oats or barley.

For purposes of paragraph 7, EEP bonus means the face value of commodity certificates issued by CCC for export sales of wheat, oats or barley.

8. Advance Payments

Advance payments provide support to the extent that the government pays the interest costs on funds advanced. The total support provided for a crop year by advance payments made by CCC for wheat, oats or barley is computed for each month in accordance with the following formula:

$$A \times \frac{B}{12} \times C$$

where:

A = advance payments made by CCC for wheat, oats or barley in a month

B = the CCC interest rate at the time the advance payments are made

C = the number of months that the payments precede the crop year for which they are made.

9. Crop Insurance Programs

The support provided through crop insurance programs is the difference between crop insurance payments made to producers under Federal Crop Insurance Programs for wheat, oats or barley for a crop year and premiums paid by producers in respect thereof. The amount of support may be a positive or negative number.

10. Government Service Programs For Agriculture

Government service programs consist of the Federal Grain Inspection Service (FGIS) weighing and inspection programs; Agricultural Research Service (ARS); Cooperative State Extension Service programs (CSES); irrigation programs under the Bureau of Reclamation (BR); Corps of Engineers (CE) inland waterway programs; conservation programs of the Soil Conservation Service (SCS) and the Agricultural Stabilization and Conservation Service (ASCS); the freight-related program expenditures and the freight-related low-interest loan program of the Federal Railway Administration (FRA); the cooperator programs of the Foreign Agricultural Service (FAS); the market news service, seed plant protection, and product standards and grading programs of the Agricultural Marketing Service (AMS); the plant disease and pest control programs of the Animal and Plant Health Inspection Service (APHIS); and projects for the promotion of wheat, oats or barley under the Targeted Export Assistance Program. Support provided for a crop year for wheat, oats or barley by these programs is determined as follows:

i) net expenditures in a fiscal year for the weighing and inspection programs of the Federal Grain Inspection Service, computed for wheat, oats or barley in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures by the Federal Grain Inspection Service for weighing and inspection programs
B = value of production of wheats, oats or barley
C = total value of production of all grains and oilseeds;

ii) net expenditures in a fiscal year by the Agricultural Research Service and the Cooperative State Extension Service, computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures for ARS & CSES
B = value of production of wheat, oats or barley
C = total value of agricultural production;

iii) net expenditures in a fiscal year by the Bureau of Reclamation for irrigation programs, computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures by the Bureau of Reclamation for irrigation programs
B = value of production of wheat, oats or barley using the irrigation programs
C = value of production of all crops using the irrigation programs;

iv) net expenditures in a fiscal year by the Corps of Engineers for the operation, maintenance and construction of inland waterways, computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures for the operation, maintenance and construction of inland waterways
B = ton-miles travelled on inland waterways by wheat, oats or barley
C = total ton-miles travelled by all commodities on inland waterways;

v) net expenditures in a fiscal year for conservation programs under the Soil Conservation Service and the Agricultural Stabilization and Conservation Service, computed for wheat, oats or barley in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A= net expenditures by the Agricultural Stabilization and Conservation Service and the Soil Conservation Service for conservation programs
B = value of production of wheat, oats or barley
C = total value of agricultural production;

vi) expenditures in a fiscal year by the Federal Railway Administration for freight-related programs, computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A= expenditures by the Federal Railway Administration for freight-related programs
B = ton-miles travelled by wheat, oats or barley on railways
C = the ton-miles travelled by all commodities on railways;

vii) support provided in a fiscal year for wheat, oats or barley by the Federal Railway Administration through low-interest loans for rail freight, computed in accordance with the following formula:

$$(A - B) \times \frac{C}{D}$$

where:

A = the commercial lending rate
B= the interest rate charged by the Federal Railway Administration on loans for rail freight
C = ton-miles travelled by wheat, oats or barley on railways
D= ton-miles travelled by all commodities on railways;

viii) net expenditures in a fiscal year by the Foreign Agricultural Service (FAS), computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures for cooperator programs of FAS
B = value of production of wheat, oats or barley
C = total value of agricultural production;

ix) net expenditures in a fiscal year for the Agricultural Marketing Service computed in accordance with the following formula:

$$(A \times \frac{B}{C}) + (D + E) \times \frac{B}{F}$$

where:

A = net expenditures for market news service
B = value of production for wheat, oats or barley
C = total value of agricultural production
D = net expenditures for seed plant protection
E = net expenditure for product standard and grading programs
F = total value of crop production;

x) net expenditures in a fiscal year for plant disease and pest control programs of the Animal and Plant Health Inspection Service (APHIS), computed for wheat, oats or barley in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = net expenditures for the plant disease and pest control programs of the Animal and Plant Health Inspection Service
B = value of production of wheat, oats or barley
C = total value of agricultural production; and

xi) net expenditures in a fiscal year under the Targeted Export Assistance Program for projects promoting wheat, oats or barley.

11. CCC Commodity Loans

The support provided by CCC commodity loans, including regular loans, Farmer-Owned Reserve loans, and Special Producer Loan Storage Program loans, is the difference between the commercial rate of interest and the rate of interest paid by a producer. Support for a crop year is the total of the amounts computed in accordance with the following formula, for each loan:

i) for regular commodity loans, loans under the Special Producer Loan Storage Program and Farmer-Owned Reserve loans not exceeding 1 year:

(A - B) x (C x D)

where:

A = the rate of interest reported by agricultural banks for non-real estate loans
B = the interest rate charged by CCC
C = the value of the loan
D = the proportion of the year the loan is in effect;

ii) for Farmer-Owned Reserve loans exceeding 1 year:

A x B x C

where:

A = the rate of interest reported by agricultural banks for non-real estate loans
B = the value of the loan
C = the proportion of that crop year the loan is in effect; and

iii) the amount of interest forgiven by CCC in a crop year on CCC commodity loans for wheat, oats or barley, computed in accordance with the following formula:

A x B x C

where for each loan:

A = the CCC interest rate for the loan
B = value of the loan for which interest has been forgiven
C = the proportion of the crop year the loan was in effect.

12. State Budget Outlays

The support provided by state governments for a crop year is the agricultural expenditures by such governments for support programs for wheat, oats or barley, computed in accordance with the following formula:

$$(A - B) \times \frac{C}{D}$$

where:

A= agricultural expenditures by state governments as compiled by the United States Bureau of the Census
B= transfers, if any, by the federal government for those expenditures
C = the value of production for wheat, oats or barley
D = the total value of agricultural production.

13. Farm Credit Programs

The support provided for a crop year by farm credit programs shall be included in the computation of the level of support. The Parties shall develop a mutually agreed methodology for computing such support by January 31, 1989.

C. Adjustments

The computation of the level of United States government support in this Annex shall reflect spending reductions resulting from a sequestration order pursuant to the *Balanced Budget and Emergency Deficit Control Act of 1985* or any other budget reduction provision.

Schedule 2

Canadian Government Support Programs

A. Direct Payments

1. Payments made pursuant to the *Agricultural Stabilization Act*

The support provided by the federal government pursuant to the *Agricultural Stabilization Act* is the total amount of payments to producers of wheat, oats or barley for that crop year.

2. Payments made pursuant to the *Western Grain Stabilization Act*

The support provided by the federal government is its share of the cost of financing the Western Grain Stabilization Program. The support is computed in accordance with the following formula:

$$\left[\frac{A}{A+B} \times C + \frac{B}{A+B} \times D\right] \times \frac{E}{F}$$

where:

A = the total amount of levy contributions made by the federal government to the Western Grain Stabilization Account in the five crop years ending in the crop year for which the computation is being made for all grains and oilseeds eligible for support under the *Act*

B = the total amount of levies paid by producers in the Western Grain Stabilization Account in the five crop years ending in the crop year for which the computation is being made for all grains and oilseeds eligible for support under the *Act*.

C = the total amount of stabilization payments made pursuant to the *Act* , for all grains and oilseeds eligible for support under the *Act*, for the crop year for which the computation is being made

D = any government funds, other than levies, to make up any Western Grain Stabilization Account deficit incurred in that crop year

E = the value of marketings in that crop year of wheat, oats or barley eligible for support under the *Act*

F = total value of marketings in that crop year of all grains and oilseeds eligible for support under the *Act*.

3. Payments pursuant to the Special Canadian Grains Program

The support provided by the federal government to producers of wheat, oats or barley through the Special Canadian Grains Program is the total amount paid to producers of such grain for the crop year.

4. Stabilization payments made by provincial governments

The support provided by provincial governments as stabilization payments is computed by subtracting producer levies from the total amount of payments made to producers of wheat, oats or barley for the crop year.

5. Income Foregone Adjustment

The support provided to producers of wheat, oats or barley is adjusted to take account of income foregone from reduced production, as a result of restrictive Canadian Wheat Board delivery quotas. The support is reduced by the income foregone for a crop year, computed in accordance with the following formula:

$$[(A - B - C) \times D - E + F] \times (G - 13) \times \frac{H}{I}$$

where:

$$E = \frac{J - K - (G \times F)}{I}$$

and where:

A = the Canadian Wheat Board final realized price, in store Thunder Bay, for No.1 CWRS wheat, No.1 Feed oats or No. 1 Feed barley in dollars per tonne

B = the average freight rate for wheat, oats and barley paid by producers in Western Canada in dollars per tonne

C = the average elevation and handling tariffs in Western Canada for wheat, oats or barley in dollars per tonne

D = the average yields in Western Canada for wheat, oats or barley in tonnes per acre

E = variable cash expenses for wheat, oats or barley in dollars per acre

F = variable cash expenses of summerfallow, deemed to be $15 per acre

G = the summerfallow area in millions of acres

H= the areas planted to wheat, oats or barley in Western Canada in millions of acres

I = the total planted area in Western Canada of crops eligible for coverage under the *Western Grain Stabilization Act* in millions of acres

J = the gross grain expenses used to calculate payments pursuant to the *Western Grain Stabilization Act*, in millions of dollars

K= the non-variable cash expenses included in J (taxes, tools, building maintenance, utilities, insurance, interest and miscellaneous) in millions of dollars.

Support shall only be adjusted when the income foregone, computed in accordance with this formula, exceeds zero.

B. Other Support

6. Expenditures of the Canadian Grain Commission

The Canadian Grain Commission (Commission) provides grading and inspection services for grains and oilseeds. The support provided by the Commission is the net expenditures in a fiscal year by the Commission for wheat, oats or barley, computed in accordance with the following formula:

$$(A - B) \times \frac{C}{D}$$

where:

A= total expenditures by the Canadian Grain Commission for all grains and oilseeds

B= user fees paid for services performed by the Canadian Grain Commission for all grains and oilseeds

C = farm cash receipts for wheat, oats or barley

D = farm cash receipts for all grains and oilseeds.

7. Wheat Board Pool Deficit

The federal government provides support to the extent that initial payments made by the Canadian Wheat Board (CWB) to producers for wheat, oats or barley exceed net returns realized by the CWB in the market. This support is computed as follows:

i) **for wheat:**

1) where, at the end of the crop year, farm stocks of wheat in Western Canada exceed 1,128,000 tonnes, support is the amount paid to the Canadian Wheat Board for that crop year by the federal government pursuant to the *Canadian Wheat Board Act* to offset any deficit in pool accounts for wheat; or

2) where at the end of the crop year, farm stocks of wheat in Western Canada do not exceed 1,128,000 tonnes, the support provided by the federal goverment for wheat for that crop year is computed in accordance with the following formula:

$$\frac{A}{B} \times (C - D + E)$$

where:

A = Canadian Wheat Board pool deficits for wheat for that crop year
B = volume of wheat delivered to the Canadian Wheat Board by eligible producers in that crop year
C = production of wheat in Western Canada in that crop year
D = farm stocks of wheat in Western Canada at the end of that crop year
E = farm stocks of wheat in Western Canada at the end of the previous crop year;

ii) **for oats or barley**: the amount paid to the Canadian Wheat Board for the crop year by the federal government pursuant to the *Canadian Wheat Board Act* to offset any deficit in pool accounts for oats or barley.

8. Domestic Wheat Pricing

Support is provided by the Domestic Wheat Pricing Policy to the extent that the domestic price for wheat exceeds the world market price. The support provided to producers of wheat by the Domestic Wheat Pricing Policy is computed in accordance with the following formula:

$$(A - B) \times C$$

where:

A = the average domestic selling price for wheat milled in Canada for domestic human consumption
B = the average export price for wheat
C = the volume of wheat milled in Canada for domestic human consumption.

For purposes of this paragraph,

i) the average domestic selling price for wheat milled in Canada for domestic human consumption is computed in accordance with the following formula:

$$D - (0.5 \times (E + F))$$

where:

D = the average domestic selling price for a crop year for No. 1 Canada Western Red Spring (CWRS) wheat of 13.5% protein
E = the difference between the Canadian Wheat Board final realized prices for that crop year for No. 1 CWRS wheat of 13.5% protein and No. 1 CWRS wheat
F = the aggregate of E and the difference between the Canadian Wheat Board final realized prices for that crop year for No. 1 CWRS wheat and No. 2 CWRS wheat;

For purposes of this subparagraph, all prices are basis in-store Thunder Bay;

ii) the value of domestic sales is computed by multiplying the average domestic selling price for wheat milled in Canada for domestic human consumption by the volume of sales from the pool account for wheat;

iii) the value of export sales is computed by subtracting the value of sales for domestic human consumption from the value of total sales from the pool account for wheat; and

iv) the average export price is computed by dividing the total value of export sales for wheat by the total volume of export sales from the pool account for wheat.

9. Domestic Price Gap: Oats or Barley

Support is provided to producers of oats or barley to the extent that the domestic price for oats or barley exceeds the world market price for that grain. The support is computed in accordance with the following formula:

$$[D - (A - B - C)] \times E$$

where:

A = the Canadian Wheat Board final realized prices for No. 1 Feed oats or No. 1 Feed barley, in store Thunder Bay
B = the average elevation and handling tariffs in Western Canada for oats or barley
C = the average freight rate paid by producers in Western Canada for oats or barley
D = the off-Board prices of oats or barley in the Prairies derived from *Western Grain Stabilization Act* data and published by the Canadian Grain Commission
E = the consumption in Western Canada of oats or barley for feed.

The amount computed in accordance with the formula is included in the computation of support only when it exceeds zero.

10. Advance Payments

Advance payments provide support to producers of wheat, oats or barley to the extent that the federal government pays interest costs on funds advanced to producers pursuant to the *Prairie Grain Advance*

Payments Act. The support is computed in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A = value of advances made in the fiscal year for wheat, oats or barley

B = value of advances made in the fiscal year for all eligible crops

C = interest cost of the funds advanced in the fiscal year to producers for all eligible crops.

11. Crop Insurance

The amount of support provided through crop insurance is the difference between crop insurance payments made to producers for wheat, oats or barley for a crop year and crop insurance premiums paid by producers in respect thereof, computed as follows:

i) in the case of provinces other than Ontario, the total amount of crop insurance payments made for wheat, oats or barley less crop insurance premiums paid by producers in respect thereof;

ii) in the case of Ontario

  1) for winter wheat, the total crop insurance payments for winter wheat less crop insurance premiums paid by producers for that crop.

  For purposes of this subparagraph, any crop insurance payments made for winter wheat are to be attributed to the crop year in which the crop was harvested;

  2) for spring wheat, oats or barley, the crop insurance payment for such grain, determined in accordance with the following formula:

$$(A - B) \times \frac{C}{D}$$

where:

A = total crop insurance payments for spring wheat, oats, barley, spring rye and mixed grains
B= total crop insurance premiums paid by producers for spring wheat, oats, barley, spring rye and mixed grains
C = total area in Ontario planted to spring wheat, oats or barley
D = total area in Ontario planted to spring wheat, oats, barley, spring rye and mixed grains.

The amount of support provided through crop insurance may be a positive or negative number.

12. Western Grain Transportation Act

The federal government through the *Western Grain Transportation Act* provides support for the rail transportation of wheat, oats or barley produced in Western Canada by sharing the cost of transportation of such grain. The support provided pursuant to the *Act* to wheat, oats or barley producers is computed as follows:

where, at the end of the crop year,

i) farm stocks in Western Canada exceed 1,128,000 tonnes for wheat, 950,000 tonnes for barley or 500,000 tonnes for oats, the government support provided under the *Act* for wheat, oats or barley is computed by multiplying the shipments in a crop year of wheat, oats or barley which are eligible for statutory rates under the *Act* by the government share of the average cost per tonne of moving wheat, oats or barley for that crop year, as determined by the Canadian Transportation Commission or its successors prior to the start of that crop year pursuant to Part II of the *Act*; or

ii) farm stocks in Western Canada do not exceed 1,128,000 tonnes for wheat, 950,000 tonnes for barley or 500,000 tonnes for oats, government support provided for that crop year under the *Act* for wheat, oats or barley is computed in accordance with the following formula:

$$A \times (B - C + D)$$

where:

A = the government share of the average cost per tonne of moving wheat, oats or barley, for that crop year, as determined by the Canadian Transportation Commission or its successor, prior to the start of that crop year pursuant to Part II of the *Act*
B = production of wheat, oats or barley in Western Canada in that crop year
C = farm stocks of wheat, oats or barley in Western Canada at the end of that crop year
D = farm stocks of wheat, oats or barley in Western Canada at the end of the previous crop year.

13. Prairie Branch Line Rehabilitation Program

The federal government provides support through the Prairie Branch Line Rehabilitation Program by paying for the rehabilitation of rail lines and for the purchase of rail cars in Western Canada. The support provided in a fiscal year for wheat, oats or barley is computed in accordance with the following formula:

$$\frac{A}{B} \times \left[\left(C \times \frac{B}{D}\right) + E + F\right]$$

where:

A = total annual shipments of wheat, oats or barley on the rehabilitated branch lines
B = total annual shipments of all grains and oilseeds on the rehabilitated branch lines
C = expenditures made under the Prairie Branch Line Rehabilitation Program during the fiscal year
D = total annual tonnage shipped over the rehabilitated branch lines
E = expenditures during the fiscal year by the federal government for the purchase or lease of hopper cars intended for the transport of grains and oilseeds
F = expenditures during the fiscal year by the federal government for the rehabilitation of boxcars intended for the transport of grains and oilseeds.

14. Research Expenditures

The support provided by the federal government for research for wheat, oats or barley is the research expenditure made in a fiscal year for that grain, or where otherwise not ascertainable, the amount computed in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A = farm cash receipts for wheat, oats or barley
B = total farm cash receipts
C = the aggregate of expenditures of the Research Branch of Agriculture Canada, the New Crop Development Program, the agriculture share of the Industrial Research Program and federal contributions to the Biotechnology Institute.

15. General Support Programs of the Federal Government

The *Prairie Farm Rehabilitation Act*, the *Agriculture and Rural Development Act* (ARDA), and the Economic and Rural Development Agreements (ERDA) provide general support to producers of wheat, oats or barley. The support is the expenditures by the federal government under the *Prairie Farm Rehabilitation Act* , ARDA and ERDA in a fiscal year for wheat, oats or barley, computed in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

A = the expenditure under the program
B = farm cash receipts for wheat, oats or barley
C = total farm cash receipts.

16. General Provincial Government Expenditures for Agriculture

The support provided for a crop year by each provincial department or ministry responsible for agriculture is the net expenditure for wheat, oats or barley or, where otherwise not ascertainable, the amount computed in accordance with the following formula:

$$(A \times 0.926) \times \frac{B}{C}$$

where:

A = expenditures for agricultural purposes by the provincial department or ministry responsible for agriculture in that province less all crop insurance and crop stabilization payments
B = farm cash receipts for wheat, oats or barley in that province
C = total farm cash receipts in that province.

For purposes of this paragraph, the ministry or department responsible for agriculture means:

1) in Newfoundland, the Department of Rural, Agricultural and Northern Development
2) in Prince Edward Island, the Department of Agriculture
3) in Nova Scotia, the Department of Agriculture and Marketing
4) in New Brunswick, the Department of Agriculture
5) in Ontario, the Ministry of Agriculture and Food
6) in Manitoba, the Department of Agriculture
7) in Saskatchewan, the Department of Agriculture
8) in Alberta, the Department of Agriculture
9) in British Columbia, the Ministry of Agriculture and Fisheries
10) in Quebec, the Ministry of Agriculture, Fisheries and Food.

17. Farm Credit Programs

Support provided for a crop year by farm credit programs shall be included in the computation of the level of support. The Parties shall develop a methodology for computing such support by January 31,1989

C. Definitions

For purposes of this Schedule:

grains and oilseeds means wheat, oats, barley, canola, flaxseed, rye, mustard seed, grain corn, soybeans, mixed grain, buckwheat, sunflower seed, peas and beans.

Western Canada means the provinces of Manitoba, Saskatchewan, Alberta, and British Columbia.

Eastern Canada means the provinces of Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland.

farm cash receipts means receipts derived from the sale of products excluding direct government payments associated with such sales.

value of production means the level of production for wheat, oats or barley multiplied by the producer price for any such grain.

the producer price of wheat is computed as the price per tonne realized by the Canadian Wheat Board, basis in-store Thunder Bay, for No. 1 Canada Western Red Spring Wheat less the aggregate of:

a) the average per tonne elevation and handling tariffs paid by producers in Western Canada; and
b) the average per tonne transportation charges paid by producers in Western Canada.

the producer price of barley is computed as the price per tonne realized by the Canadian Wheat Board, basis in-store Thunder Bay, for No. 1 Feed barley less the aggregate of:

a) the average per tonne elevation and handling tariffs paid by producers in Western Canada; and
b) the average per tonne transportation charges paid by producers in Western Canada.

the producer price of oats is computed as the price per tonne realized by the Canadian Wheat Board, basis in-store Thunder Bay, for No. 1 Feed oats less the aggregate of:

a) the average per tonne elevation and handling tariffs paid by producers in Western Canada; and
b) the average per tonne transportation charges paid by producers in Western Canada.

Annex 706

Market Access for Poultry

1. For purposes of Article 706:

   a) chicken and chicken products means chicken and chicken capons, live or eviscerated, chicken parts, whether breaded or battered, and chicken products manufactured wholly thereof, whether breaded or battered;

   b) turkey and turkey products means turkey, live or eviscerated, turkey parts, whether breaded or battered, and turkey products, manufactured wholly thereof, whether breaded or battered.

2. Without limiting the generality of subparagraph 1(a), chicken and chicken products does not include chicken cordon bleu, breaded breast of chicken cordon bleu, chicken Kiev, breaded breast of chicken Kiev, boneless Rock Cornish with rice, stuffed Rock Cornish; boneless chicken with apples and almonds, chicken Romanoff Regell, chicken Neptune breast, boneless chicken Panache, chicken TV dinners, old roosters, and "spent fowl" commonly called "stewing hen".

3. Without limiting the generality of subparagraph 1(b), turkey and turkey products does not include turkey cordon bleu, breaded breast of turkey cordon bleu, turkey Kiev, breaded breast of turkey Kiev, boneless turkey with apples and almonds, turkey Romanoff Regell, turkey Neptune breast, boneless turkey Panache, and turkey TV dinners.

Annex 708.1

Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods

For purposes of the Schedules contained in this Annex:

feed means a product intended for consumption by animals, including a medicated feed, but not a product regulated by either Party as a veterinary drug;

fertilizer means any good supplying nutrients for plant growth; soil and plant amendments; agricultural liming and acidifying agents and mixtures of fertilizers and pesticides;

means of conveyance means any material, equipment, carrier, container, article or other thing that may contain or carry a plant pest;

pest, for purposes of Schedule 7 only, means any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest, and includes any injurious, noxious or troublesome organic function of a plant or animal;

pesticide, for purposes of Schedule 7 only, means any product, device, organism or substance manufactured, represented or sold to control or mitigate actions of any pest;

plant means any plant or part thereof, plant material and plant product;

plant pest means any form of plant or animal life or any pathogenic agent, injurious or potentially injurious to plants; and

veterinary drug means any substance applied or administered to an animal, whether for therapeutic, prophylactic, or diagnostic purposes, or for the modification of physiological functions or behavior, but excluding veterinary biologics such as vaccines, bacterins, antisera or toxoids and analogous products.

SCHEDULE 1: Feeds

1. For purposes of this Schedule, technical regulations do not include grading requirements.

2. The Parties shall, with respect to feeds:

a) work toward the harmonization or equivalence of federal government requirements for:

   i) labelling, content guarantees, testing requirements, and exemptions from specified regulations, and

   ii) source, type, level, directions for use, withdrawal times, compatibility, cautions and warnings for additives and drugs that are allowed in feeds;

b) work, through the National Association of State Departments of Agriculture and the Association of American Feed Control Officials, or any successor entities, toward the harmonization or equivalence of Canadian federal and United States federal and state requirements with respect to labelling, content guarantees, packaging, testing requirements, tonnage fees, registration and exemptions from specified regulations;

c) adopt procedures to exchange, and grant reciprocal recognition of, feed mill inspection results;

d) work toward the establishment of equivalent manufacturing practice regulations for medicated feeds;

e) work toward the harmonization of procedures to validate feed assay methods for measuring drugs, additives and contaminants in feeds; and

f) work toward the harmonization of tolerances and action levels of contaminants and drug residues in feeds.

SCHEDULE 2: Fertilizers

The Parties shall, with respect to fertilizers:

a) work toward equivalent federal government requirements for:

   i) labelling, content guarantees, testing requirements, and exemptions from specified regulations for soil and plant amendments, and

   ii) source, type, level, directions for use, withdrawal times, compatibility, cautions and warnings for pesticides that are allowed in fertilizers;

b) work, through the National Association of State Departments of Agriculture, the Association of American Plant Food Control Officials, or any successor entities, toward the harmonization or equivalence of Canadian federal and United States state requirements for registration, labelling, content guarantees, packaging, tonnage fees and exemptions from specified regulations;

c) work toward the adoption of procedures to harmonize sampling and analytical test methods (such as those adopted by the Association of Official Analytical Chemists) for determining the guarantees with respect to content and contaminants; and

d) work toward harmonizing tolerances and action levels.

SCHEDULE 3: Seeds

The Parties shall, with respect to seeds:

a) not maintain or introduce origin-staining requirements for alfalfa or clover seed originating in the territory of the other Party;

b) work, through the National Association of State Departments of Agriculture and the American Association of Seed Control Officials, or any successor entities, toward allowing seeds grown in the territory of Canada and imported into the United States of America to be governed by uniform regulatory requirements within the United States of America; and

c) maintain mutual recognition of variety certification standards and procedures, and seed testing methods and procedures, established by members of the Association of Seed Certifying Agencies and the Association of Official Seed Analysts or any successor entities.

SCHEDULE 4: Animal Health

1. The Parties shall, with respect to animal health:

a) make equivalent and, where equivalent, accept the equivalence of, export certifications issued by private veterinarians accredited by the federal governments of either Party;

b) exchange test protocols and reagents to assist in the harmonization of test methods;

c) work toward equivalent technical regulations, testing and certification procedures for veterinary biologics;

d) work toward equivalent and, where possible, harmonized animal disease test methods and procedures for animal disease control, eradication and certification;

e) work toward procedures and conditions for the importation of animals, including embryos, without disease testing or with minimal testing and certification, when the territory of, or a region within, the exporting Party attains an agreed acceptable status for specified diseases;

f) work toward the development of procedures and conditions to reduce the embargo period following eradication of outbreaks of foot and mouth disease, rinderpest, or other diseases exotic to Canada and the United States of America;

g) work toward an agreement delineating the criteria for recognizing that a region is free from specified diseases;

h) maintain a current agenda of animal health issues and develop a specific timetable for their resolution; and

i) work toward eliminating state and provincial restrictions related to the importation of animals, including embryos, animal products and by-products.

2. In accordance with procedures and conditions to be agreed, the United States of America shall not prohibit the importation of animals, including embryos, and animal products, from Canadian regions because of foot and mouth disease or rinderpest, when:

a) the Parties have negotiated an agreement in accordance with subparagraph 1(g) of this Schedule; and

b) Canada has certified that those regions are free of foot and mouth disease or rinderpest.

3. In accordance with procedures and conditions to be agreed, Canada shall permit the direct importation, without quarantine, of:

a) in the case of bluetongue, United States breeding cattle based on a single test from states where an effective insect vector does not exist and from a group of states during a specified vector-free winter period; and

b) in the case of pseudorabies, live swine from the United States of America for immediate slaughter.

SCHEDULE 5: Veterinary Drugs

1. The Parties recognize that:

   a) veterinary drugs should be safe for the target animal;

   b) veterinary drugs should be effective for their intended use; and

   c) in the case of veterinary drugs for food-producing animals, the residue of the drug remaining in the edible product of the animal should be safe for animal and human consumption.

2. The Parties shall, with respect to veterinary drugs:

   a) make equivalent and, where equivalent, accept the equivalence of, health and safety regulatory requirements, definitions, claims, warning and caution statements, procedures for establishing tolerances, methods of risk assessment and investigational new veterinary drug requirements within twenty-four months of entry into force of this Agreement;

   b) examine published tolerances for veterinary drug residues in food and classify them into those tolerances that are harmonized and those that are different;

   c) adopt, where both Parties agree to their use, CODEX standards on residues of veterinary drugs in foods;

   d) make equivalent and, where equivalent, accept the equivalence of, pharmaceutical assay methods, drug residue screening, and food monitoring assay methods;

   e) make equivalent and, where equivalent, accept the equivalence of, emergency drug use authorizations and veterinary prescriptions for the medication of feeds;

   f) adopt procedures to harmonize tissue assay methods within twelve months of entry into force of this Agreement; and

   g) work toward developing a minimum threshold for compounds that do not have a published tolerance, for purposes of removing from regulation such compounds found in food at levels below that threshold. This policy will only apply to compounds where there is no indication that the substance is a carcinogen.

SCHEDULE 6: Plant Health

1. The Parties shall, with respect to plant health:

   a) work toward equivalent and, where possible, harmonized quarantine procedures for plants that are produced or grown in the territories of both Parties;

   b) work toward equivalent and, where possible, harmonized regulations regarding the importation of plants, particularly from third countries;

   c) work toward an agreement on the qualifications to be met by accredited plant health inspectors of either Party who issue phytosanitary certificates for shipments between the Parties. Once the Parties so agree, any such inspector shall be required to meet the agreed qualifications and each Party shall accept certificates issued by those inspectors; and

   d) notify the other Party, as soon as possible, of action taken within their respective territories to monitor and control plant pests or the importation of plants, whether from the other Party or from a third country.

2. When a plant capable of carrying a plant pest is produced or grown in the territory of one Party but not in that of the other, the non-producing or non-growing Party shall:

   a) inform the public of the dangers of unauthorized transborder movement of such plants and of the necessity to control the export of these plants and means of conveyance into the territory of the producing or growing Party; and

   b) provide such controls on, and phytosanitary certification of, such plants by inspectors accredited by the federal government of either Party, as are required to protect the health of plants in the producing or growing Party.

SCHEDULE 7: Pesticides

The Parties shall, with respect to pesticides:

a) exchange analytical residue methodology and provide crop residue data for the use, including minor uses, of pesticides;

b) cooperate regarding regulatory reviews of data on registered older chemicals;

c) work toward equivalent guidelines, technical regulations, standards and test methods;

d) work toward equivalent residue monitoring programs;

e) work toward equivalent technical regulations, standards or certifications for those pesticides selected by the Parties; and

f) work toward equivalence in:

  i) the process for risk-benefit assessment,

  ii) tolerance setting, and

  iii) the setting of regulatory policies with respect to oncogenic pesticides.

SCHEDULE 8: Food, Beverage and Colour Additives

The Parties shall, with respect to food, beverage and colour additives, work toward the development of:

a) a uniform policy, with respect to compounds that migrate to foods and beverages, for removing those compounds from regulation where found below certain thresholds; and

b) uniform methods of risk assessment and health hazard evaluation systems.

SCHEDULE 9: Packaging and Labelling of Agricultural, Food, Beverage and Certain Related Goods for Human Consumption

1. The Parties shall, with respect to packaging and labelling of agricultural, food, beverage and certain related goods for human consumption:

a) work toward the acceptance of dual declarations of content where the net quantity can be expressed in metric and United States units of measure, regardless of the order of the declaration;

b) work toward equivalent requirements for matters such as:

   i) nutrition labelling,

   ii) ingredient listing or declaration,

   iii) labelling terminology and definitions,

   iv) grading declarations; and

c) review container sizes, including can sizes.

2. The Parties shall accept the use of the terms "canola oil" and "low erucic acid rapeseed oil" as synonymous. Canola oil means the oil extracted from canola seed, which oil contains less than two percent erucic acid.

SCHEDULE 10: Meat, Poultry and Egg Inspection

1. The Parties shall work toward making equivalent and, where equivalent, accepting the equivalence of:

a) each other's reviews of mutually recognized meat and poultry inspection systems and facilities of third countries;

b) each other's internal review systems with respect to meat, poultry, egg and egg product inspection;

c) each other's meat, poultry, egg and egg product inspection systems;

d) each other's laboratory system procedures, and the results from each others' federally accredited and approved laboratories with respect to meat and poultry; and

e) specific testing methods and procedures with respect to eggs and egg products.

2. Consistent with paragraph 3 of Article 708, where:

a) the Parties have harmonized or accepted the equivalence of each other's inspection systems or certification procedures for meat, poultry, or eggs, and

b) the exporting Party has, pursuant to such systems or procedures, determined or certified that such meat, poultry, or eggs meet the standards or technical regulations of the importing Party,

the importing Party may examine such goods imported from the territory of the exporting Party only to ensure that (b) has occurred. This provision shall not preclude spot checks or similar verifying measures necessary to ensure compliance with the importing Party's standards or technical regulations provided that such spot checks or similar verifying measures, including any conducted at the border and including any unloading requirement, are conducted no more frequently than those conducted by the importing Party, under similar circumstances, with respect to its goods.

SCHEDULE 11: Dairy, Fruit and Vegetable Inspection

The Parties shall:

a) make equivalent and, where equivalent, accept the equivalence of, each Party's inspection systems for fresh fruits and vegetables;

b) work toward equivalent inspection systems for dairy products; and

c) make equivalent and, where equivalent, accept the equivalence of, laboratory system results from each other's federally accredited or approved laboratories for dairy inspection.

SCHEDULE 12: Unavoidable Contaminants in Foods and Beverages

The Parties shall, with respect to unavoidable contaminants in foods and beverages, work toward:

a) harmonizing their regulatory requirements;

b) making equivalent test methods used to determine acceptable levels of contaminants in foods and beverages;

c) harmonizing the process for setting tolerance or action levels for unavoidable contaminants through the following procedures:

   i) determining to what extent the contaminant is unavoidable,

   ii) determining the toxicity of the contaminant,

   iii) estimating the likely exposure for humans,

   iv) using risk assessment to establish an action level or tolerance, and

   v) determining the extent to which analytical methods are available to measure contaminants in foods and beverages; and

d) developing uniform methods of assessing risk and evaluating health hazards.

Chapter Eight: Wine and Distilled Spirits

Chapter Eight provides for the reduction of barriers to trade in wine and distilled spirits which arise from measures related to their internal sale and distribution. It constitutes a partial derogation from the national treatment provisions of Chapter Five. The specific measures covered concern listing, pricing, distribution practices, blending requirements and the standards and labelling requirements affecting distinctive products. The objective of the chapter is to provide over time equal treatment for Canadian and U.S. wine and distilled products in each other's market. Canadians will, as a result, enjoy greater access to a wide variety of California wines at competitive prices. The brewing industry is not covered by this chapter (but see Chapter Twelve).

The chapter specifies that measures concerning listing for sale of wine and distilled spirits are to be transparent, treat Canadian and U.S. products in the same way and be based on normal commercial considerations. Any distiller or wine producer applying for a listing is to be informed promptly of listing decisions, given the reasons for any refusal and the right to appeal such a decision. Estate wineries in British Columbia which existed on Oct. 4, 1987 and which produce less than 30,000 gallons annually may be automatically listed in that province.

On pricing, the chapter allows a provincial liquor board or any other public body distributing wine and distilled spirits to charge the additional cost of selling the imported product. Differential charges on wine which exceed this amount are to be reduced over a seven-year period from 1989 through 1995. The method for calculating this differential is specified. Differential charges on distilled spirits which exceed this amount are to be eliminated immediately when the agreement comes into force. All other discriminatory pricing measures are to be eliminated immediately.

On distribution, measures can be maintained which allow wineries or distilleries to limit sales on their premises to wines and spirits produced on those premises. Similarly, Ontario and British Columbia are not prevented from allowing private wine outlets existing on Oct. 4, 1987 to favour their own wine. The Quebec provision relating to in-province bottling of wine for sale in grocery stores is grandfathered.

Canada has agreed to eliminate any measure requiring that distilled spirits imported in bulk from the United States be blended with Canadian spirits.

The chapter provides for mutual recognition of Canadian Whiskey and U.S. Bourbon Whiskey as distinct products. This means that the U.S. will not allow the sale of any product as Canadian Whiskey unless it has been manufactured in Canada in accordance with Canadian laws. Canada will not permit the sale of any product as Bourbon Whiskey unless it has been manufactured in the United States in accordance with U.S. laws.

Chapter Eight

Wine and Distilled Spirits

Article 801: Coverage

1. This Chapter applies to any measure related to the internal sale and distribution of wine and distilled spirits.

2. Except as otherwise provided in this Chapter, Chapter Five (National Treatment) shall not apply to:

   a) a non-conforming provision of any existing measure;

   b) the continuation or prompt renewal of a non-conforming provision of any existing measure; or

   c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of Chapter Five.

3. The Party asserting that paragraph 2 applies to one of its measures shall have the burden of establishing the validity of such assertion.

Article 802: Listing

1. Any measure related to listing of wine and distilled spirits of the other Party shall:

   a) conform with Chapter Five;

   b) be transparent, non-discriminatory and provide for prompt decision on any listing application, prompt written notification of such decision to the applicant and, in the case of a negative decision, provide for a statement of the reason for refusal;

   c) establish administrative appeal procedures for listing decisions that provide for prompt, fair and objective rulings;

   d) be based on normal commercial considerations;

e) not create disguised barriers to trade; and

f) be published and made generally available to persons of the other Party.

2. Notwithstanding paragraph 1 and Chapter Five, and provided that listing measures of British Columbia otherwise conform with the provisions of paragraph 1 and Chapter Five, automatic listing measures in the province of British Columbia may be maintained provided they apply only to estate wineries existing on October 4, 1987, producing less than 30,000 gallons of wine annually and meeting the then-existing content rule.

Article 803: Pricing

1. Where the distributor is a public entity, the entity may charge the actual cost-of-service differential between wine or distilled spirits of the other Party and domestic wine or distilled spirits. Any such differential shall not exceed the actual amount by which the audited cost of service for the wine or distilled spirits of the exporting Party exceeds the audited cost of service for the wine or distilled spirits of the importing Party.

2. Nothing in paragraph 1 and Chapter Five shall prohibit a differential in price mark-ups for wine in excess of that referred to in paragraph 1 prior to January 1, 1995, provided that any such excess does not exceed:

a) as of January 1, 1989, 75 percent of the base differential referred to in paragraph 3;

b) as of January 1, 1990, 50 percent of such base differential;

c) as of January 1, 1991, 40 percent of such base differential;

d) as of January 1, 1992, 30 percent of such base differential;

e) as of January 1, 1993, 20 percent of such base differential;

f) as of January 1, 1994, 10 percent of such base differential; and

g) as of January 1, 1995 and beyond, 0 percent of such base differential.

3. For purposes of paragraph 2, the base differential shall be calculated by subtracting the permissible cost-of-service differential referred to in paragraph 1 from the mark-up differential applied by the competent authority as of October 4, 1987.

4. All discriminatory mark-ups on distilled spirits shall be eliminated immediately upon the entry into force of this Agreement. Cost-of-service differential mark-ups as described in paragraph 1 above shall be permitted.

5. Any other discriminatory pricing measure shall be eliminated upon entry into force of this Agreement.

Article 804: Distribution

1. Any measure related to distribution of wine or distilled spirits of the other Party shall conform with Chapter Five.

2. Notwithstanding paragraph 1, and provided that distribution measures otherwise ensure conformity with Chapter Five, a Party may:

a) maintain or introduce a measure limiting on-premise sales by a winery or distillery to those wines or distilled spirits produced on its premises; or

b) maintain a measure requiring private wine store outlets in existence on October 4, 1987 in the provinces of Ontario and British Columbia to discriminate in favour of wine of those provinces to a degree no greater than the discrimination required by such existing measure.

3. Nothing in this Agreement shall prohibit the Province of Quebec from requiring that any wine sold in grocery stores in Quebec be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of wine of the United States of America, whether or not such wine is bottled in Quebec.

Article 805: Blending Requirement

Canada shall eliminate any measure requiring that distilled spirits imported in bulk from the United States of America for bottling be blended with any distilled spirits of Canada.

Article 806: Distinctive Products

1. Solely for purposes of standards and labelling, Canada shall recognize the standard for Bourbon Whiskey, including straight Bourbon Whiskey, as described in the laws and regulations of the United States of America. Accordingly, Canada shall not permit the sale of any product as Bourbon Whiskey, including straight Bourbon Whiskey, unless the product has been manufactured in the United States of America and complies with the prescribed standards of the United States of America.

2. Solely for purposes of standards and labelling, the United States of America shall recognize Canadian Whiskey as a distinctive product of Canada. Accordingly, the United States of America shall not permit the sale of any product as Canadian Whiskey unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whiskey for consumption in Canada.

Article 807: International Obligation

Unless otherwise specifically provided in this Chapter, the Parties retain their rights and obligations under the *General Agreement on Tariffs and Trade* (GATT) and agreements negotiated under the GATT.

Article 808: Definitions

For purposes of this Chapter:

distilled spirits include distilled spirits and distilled spirit-containing beverages;

existing measure means a measure in force as of October 4, 1987;

in existence on October 4, 1987 means, with respect to wine store outlets referred to in subparagraph 2(b) of Article 804, those, that on October 4, 1987, were in operation, were in the process of being built, or for which an application to operate had been approved by the Ontario or British Columbia liquor controlling authority, as the case may be; and

wine includes wine and wine-containing beverages.

Chapter Nine: Trade in Energy

Over the past decade, bilateral trade in energy has assumed increasing importance to Canadians. Canada exports more than $10 billion in energy products annually, including oil, gas, electricity and uranium. Billions more are exported in the form of downstream products such as various oil and gas derivatives. That trade provides a livelihood for thousands of Canadians. Some of these exports, however, are limited or threatened by U.S. restrictions and regulatory actions, including restrictions on exports of upgraded Canadian uranium, discriminatory price actions on natural gas, tariffs and threatened import fees on crude oil and products, and threatened restrictions on electricity.

This chapter, which reproduces some of the provisions of Chapter Four as they relate to energy goods, will secure Canada's access to the United States market for energy goods. The two countries have recognized that they have a common interest in ensuring access to each other's market and enhancing their mutual security of supply. They have, therefore, built on their existing GATT rights and obligations and agreed that, as each other's best customers, they should get fair treatment should there be any controls on energy commodities. Both remain free to determine whether and when to allow exports and may continue to monitor and license exports.

Article 902 affirms Canadian and U.S. rights and obligations under the GATT on trade restrictions in energy products. This includes a prohibition on minimum export or import price commitments. More particularly, the United States has agreed to eliminate all U.S. restrictions on the enrichment of Canadian uranium and Canada will eliminate the requirement for uranium to be processed before it is exported to the U.S. The United States has also agreed to end its total embargo on exports of Alaskan crude oil and allow Canadians to import up to 50,000 barrels a day. These commitments are described in Annex 902.5.

Where either Canada or the U.S. applies import or export restrictions to energy trade with other countries, it may limit or prohibit the pass-through of imports from those other countries into its own territory. It may also require, in such instances, that its exports to the other be consumed within the other's territory.

Article 903 on export taxes restates the obligation of Chapter Four not to impose taxes or charges on exports unless the same tax is applied to energy consumed domestically. Article 904 on other export measures restates the obligations of Chapter Four that export restrictions may not reduce the proportion of the good exported to the other party relative to the total supply of the good compared to the proportion exported prior to the imposition of the restriction. It also prevents the use of licenses, fees or other measures to charge higher prices for exports when such restrictions are used for short supply, conservation or domestic price stabilization reasons.

This article also provides that export restrictions not be designed to disrupt normal channels of supply or alter the product mix as between various types of specific energy goods exported to the other country. For example, if Canada in future decides to implement measures to limit the consumption of oil, it can reduce exports to the United States proportional to the total supply of oil available in Canada. Any such restrictions must not be designed to disrupt normal trade patterns.

The two countries have also agreed to allow existing or future incentives for oil and gas exploration and development in order to maintain the reserve base for these energy resources.

The chapter recognizes the important role played by the National Energy Board in Canada and the Federal Energy Regulatory Commission and the Economic Regulatory Administration in the United States. If discrimination inconsistent with this agreement results from a regulatory decision, direct consultations can be held with a view to ending any discriminatory action, such as the decisions earlier this year by the Federal Regulatory Commission prohibiting Canadian suppliers of natural gas from passing all their shipment costs on to their customers.

In Annex 905.2, Canada undertakes to eliminate one of three price tests which the National Energy Board (NEB) applies to exports. Through these tests, the NEB assesses whether all costs have been recovered, whether the offered price would not be less than the cost to Canadians for equivalent service, and whether the offered price would be materially less than the least cost alternative for the buying entity. It is this "least cost alternative test" only which is being eliminated.

The United States will require the Bonneville Power Administration to treat British Columbia Hydro no less favourably with respect to access to power transmission lines than utilities located outside the US Pacific Northwest. The two governments state their expectation that Bonneville Power and British Columbia Hydro will continue to negotiate mutually beneficial arrangements on the use of power transmission lines.

Article 907 provides a tighter national security exception than is contained in the GATT and for the agreement as a whole, while Article 908 indicates that the provisions of the Agreement on an International Energy Program, which governs trade in oil during tight supply conditions, take precedence over the provisions of this chapter.

Chapter Nine

Energy

Article 901: Scope

1. This Chapter applies to measures related to energy goods originating in the territory of either Party.

2. For purposes of this Chapter, energy goods refer to those goods classified in the Harmonized System under:

a) Chapter 27 (except headings 2707 and 2712);

b) subheading 2612.10;

c) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings); and

d) subheading 2845.10.

Article 902: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties affirm their respective rights and obligations under the *General Agreement on Tariffs and Trade* (GATT) with respect to prohibitions or restrictions on bilateral trade in energy goods.

2. The Parties understand that the GATT rights and obligations affirmed in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum export-price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum import-price requirements.

3. In circumstances where a Party imposes a restriction on importation from or exportation to a third country of an energy good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of the other Party of such energy good of the third country; or

b) requiring as a condition of export of such energy good to the territory of the other Party, that the good be consumed within the territory of the other Party.

4. In the event that either Party imposes a restriction on imports of an energy good from third countries, the Parties, upon request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. The Parties shall implement the provisions of Annex 902.5.

Article 903: Export Taxes

Neither Party shall maintain or introduce any tax, duty, or charge on the export of any energy good to the other Party, unless such tax, duty, or charge is also maintained or introduced on such energy good when destined for domestic consumption.

Article 904: Other Export Measures

Either Party may maintain or introduce a restriction otherwise justified under the provisions of Articles XI:2(a) and XX(g), (i) and (j) of the GATT with respect to the export of an energy good of the Party to the territory of the other Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of a specific energy good made available to the other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of an energy good to the other Party than the price charged for such energy good when consumed domestically, by means of any measure such as licences, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price which may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to the other Party or normal proportions among specific energy goods supplied to the other Party such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

Article 905: Regulatory and Other Measures

1. If either Party considers that energy regulatory actions by the other Party would directly result in discrimination against its energy goods or its persons inconsistent with the principles of this Agreement, that Party may initiate direct consultations with the other Party. For purposes of this Article, an "energy regulatory action" shall include any action, in the case of Canada, by the National Energy Board, or its successor, and in the case of the United States of America, by either the Federal Energy Regulatory Commission or the Economic Regulatory Administration or their successors. Consultations with respect to the actions of these agencies shall include, in the case of Canada, the Department of Energy, Mines, and Resources and, in the case of the United States of America, the Department of Energy. With respect to a regulatory action of another agency, at any level of government, the Parties shall determine which agencies shall participate in the consultations.

2. In addition, the Parties shall implement the provisions of Annex 905.2.

Article 906: Government Incentives for Energy Resource Development

Both Parties have agreed to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

Article 907: National Security Measures

Neither Party shall maintain or introduce a measure restricting imports of an energy good from, or exports of an energy good to, the other Party under Article XXI of the GATT or under Article 2003 (National Security) of this Agreement, except to the extent necessary to:

a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;

b) respond to a situation of armed conflict involving the Party taking the measure;

c) implement national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or

d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

Article 908: International Obligations

The Parties intend no inconsistency between the provisions of this Chapter and the *Agreement on an International Energy Program* (IEP). In the event of any unavoidable inconsistency between the IEP and this Chapter, the provisions of the IEP shall prevail to the extent of that inconsistency.

Article 909: Definitions

For purposes of this Chapter:

consumed means transformed so as to qualify under the rules of origin set out in Chapter Three, or actually consumed;

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum price requirements or any other means;

total export shipments means the total shipments from total supply to users located in the territory of the other Party; and

total supply means shipments to domestic users and foreign users from

a) domestic production,
b) domestic inventory, and
c) other imports, as appropriate.

Annex 902.5

Import Measures

1. The United States of America shall exempt Canada from any restriction on the enrichment of foreign uranium under section 161v of the *Atomic Energy Act.*

Export Measures

2. Canada shall exempt the United States of America from the Canadian Uranium Upgrading Policy as announced by the Minister of State for Mines on October 18, 1985.

3. The United States of America shall exempt Canada from the prohibition on the exportation of Alaskan oil under section 7(d) of the *Export Administration Act of 1979,* as amended, up to a maximum volume of 50 thousand barrels per day on an annual average basis, subject to the condition that such oil be transported to Canada from a suitable location within the lower 48 states.

Annex 905.2

Regulatory and Other Measures

Canada

1. Of the tests set out under subparagraph 6(2)(z) of the *National Energy Board Part VI Regulations* on the export of energy goods to the United States of America, Canada shall eliminate the "least cost alternative test", described in subparagraph 6(2)(z)(iii).

United States of America

2. The United States of America shall cause the Bonneville Power Administration to modify its Intertie Access Policy so as to afford British Columbia Hydro treatment no less favourable than the most favourable treatment afforded to utilities located outside the Pacific Northwest.

3. No other policy of the Bonneville Power Administration or law authorizing such policy need be changed insofar as such law or policy concerns energy sales, transmission of energy and related business arrangements between the Bonneville Power Administration and British Columbia Hydro.

General

4. It is understood that the implementation of this Chapter includes the administration of any "surplus tests" on the export of any energy good to the other Party in a manner consistent with the provisions of Articles 902, 903 and 904.

5. The Parties fully expect that the Bonneville Power Administration and British Columbia Hydro will continue to negotiate mutually beneficial arrangements consistent with the objectives of this Agreement and separately to seek any additional authorities that may be needed.

Chapter Ten: Trade in Automotive Products

The automotive industry is the linchpin of Canadian manufacturing and the trade flow between Canada and the United States in autos is enormous. Autoworkers on both sides of the border have been beneficiaries of what has been our most important bilateral free-trade deal to date -- the Auto Pact. Throughout the negotiations, the Canadian government indicated that it was satisfied with the Auto Pact but was not averse to considering changes that would increase production, investment and employment in Canada. The Agreement meets these objectives.

The free and secure access to the U.S. market provided by the Auto Pact remains intact. The Auto Pact safeguards and the Canadian value-added commitments remain in place for the Big Three auto manufacturers.

Section XVII of Annex 301.2 provides that all vehicles traded under the Free-Trade Agreement will be subject to a special rule of origin. Under the Auto Pact, qualified producers, as long as they meet the safeguards, can import vehicles and parts duty-free into Canada from anywhere in the world. Fifty percent of the direct production costs of any vehicle traded under the Free-Trade Agreement, however, will have to be incurred in Canada and the United States to qualify for duty-free treatment. Under the current rule governing exports to the U.S. under the Auto Pact, overhead and other indirect costs are included in the requirement that 50 percent of the invoice price be incurred in Canada or the U.S. The new rule is the equivalent of a 70 percent requirement on the old basis. To meet this test, assemblers will have to source more parts in North America, giving Canadian parts manufacturers increased opportunities.

The United States will accord vehicles and original equipment parts exported from Canada duty-free access if they meet the new rule of origin. Such goods now enjoy duty-free access under the Auto Pact. For northbound trade, Canadian manufacturers with Auto Pact status can import duty free under the Auto Pact (by satisfying the safeguards). Goods imported by all others under the FTA must meet the FTA rule if they wish to benefit from the declining bilateral tariff.

Chapter Ten addresses issues which are unique to the auto sector. It provides that each country will endeavour to administer the Auto Pact in the best interests of production and employment in Canada and *the United States. It specifies that Canada shall not add to those Canadian manufacturers operating under the Auto Pact and comparable arrangements as of the entry into force of the agreement.*

There are separate provisions respecting other automotive duty waivers or remissions. Existing remissions cannot be extended to additional recipients, nor expanded, nor extended where such remissions apply to goods imported from other countries and are tied to performance requirements on automotive or other goods. Duty remissions earned through exports will be terminated by 1998, with exports to the United States ruled out upon entry into force of the Agreement. The current recipients of these waivers are listed in an annex, as are manufacturers who qualify under the Auto Pact.

Waivers or remissions committed prior to the Agreement's entry into force and tied to the value added contained in production in Canada other than for manufacturers qualifying under the Auto Pact are to be terminated by 1996.

Article 1003 provides for the phased elimination of the used car embargo. By 1993, there will be free trade in used automobiles.

These provisions taken together mean that:

- *The Big Three and other qualified auto makers will be able to continue to benefit from their privileges under the Auto Pact and comparable arrangements to bring in vehicles and parts duty-free from all over the world as long as they continue to meet the Auto Pact production safeguards. They currently save $300 million annually in duties on their imports from third countries.*

- *Manufacturers listed in Annex 1002.1 Part 1 who can qualify for Auto Pact status in the 1989 model year will enjoy similar benefits.*

- *The Canadian government will continue to honour its commitments to provide duty waivers to companies with new production facilities in Canada to encourage them to source parts in Canada. This program and the rule of origin provisions in Chapter Three will provide a strong incentive for offshore producers to purchase parts in Canada.*

in Chapter Three will provide a strong incentive for offshore producers to purchase parts in Canada.

The two governments also agreed that some of the challenges facing the North American auto industry were more than a matter of negotiating a Free-Trade Agreement. They have, therefore, agreed to establish a select panel to advise the two governments on automotive issues (Article 1004).

Chapter Ten

Trade in Automotive Goods

Article 1001: Existing Arrangement

Each Party shall endeavour to administer the *Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America* that entered into force definitively on September 16, 1966 in the best interests of employment and production in both countries.

Article 1002: Waiver of Customs Duties

1. Neither Party shall grant a waiver of otherwise applicable customs duties to a recipient other than those recipients listed in Annex 1002.1, nor shall either Party expand the extent or application of, or extend the duration of, any waiver granted to any such recipient with respect to:

   a) automotive goods imported into its territory from any country where such waiver is conditioned, explicitly or implicitly, upon the fulfillment of performance requirements applicable to any goods; or

   b) any goods imported from any country where such waiver is conditioned, explicitly or implicitly, upon the fulfillment of performance requirements applicable to automotive goods.

2. Waivers of customs duties granted to the recipients listed in Part Two of Annex 1002.1, where the amount of duty waived depends on exports, shall:

   a) after January 1, 1989 exclude exports to the territory of the other Party in calculating the duty waived; and

   b) terminate on or before January 1, 1998.

3. Waivers of customs duties granted to the recipients listed in Part Three of Annex 1002.1, where the amount of duty waived depends on Canadian value added contained in production in Canada, shall terminate not later than:

a) January 1, 1996; or

b) such earlier date specified in existing agreements between Canada and the recipient of the waiver.

4. Whenever the other Party can show that a waiver or combination of waivers of customs duties granted with respect to automotive goods for commercial use by a designated person has an adverse impact on the commercial interests of a person of the other Party, or of a person owned or controlled by a person of the other Party that is located in the territory of the Party granting the waiver of customs duties, or on the other Party's economy, the Party granting the waiver either shall cease to grant it or shall make it generally available to any importer. The provisions of this paragraph shall not apply to the waivers of customs duties to those recipients listed in Part One of Annex 1002.1 in accordance with the headnote to that Part or to the waivers of customs duties referred to in paragraphs 2 and 3 for the periods during which such waiver of customs duties may be conditioned upon the fulfillment of performance requirements set forth in paragraphs 2 and 3.

Article 1003: Import Restrictions

Canada shall phase out the import restriction on used automobiles set out in tariff item 99215-1 of Schedule C to the *Customs Tariff*, or its successor, in five annual stages commencing on January 1, 1989 in accordance with the following schedule:

a) in the first year, used automobiles that are eight years old or older;

b) in the second year, used automobiles that are six years old or older;

c) in the third year, used automobiles that are four years old or older;

d) in the fourth year, used automobiles that are two years old or older; and

e) in the fifth year and thereafter, no restrictions.

Article 1004: Select Panel

The Parties recognize the continued importance of automotive trade and production for the respective economies of the two countries and the need to ensure that the industry in both countries should prosper in the future. As the worldwide industry is evolving very rapidly, the Parties shall establish a select panel consisting of a group of informed persons to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets. The Parties shall also cooperate in the Uruguay Round of multilateral trade negotiations to create new export opportunities for North American automotive goods.

Article 1005: Relationship to Other Chapters

1. Chapter Three (Rules of Origin) applies to:

   a) automotive goods imported into the territory of the United States of America; and

   b) automotive goods imported into the territory of Canada under this Agreement.

2. In determining whether a vehicle originates in the territory of either Party or both Parties under paragraph 4 of Section XVII of Annex 301.2, instead of a calculation based on each vehicle, the manufacturer may elect to average its calculation over a 12 month period on the same class of vehicles or sister vehicles (station wagons and other body styles in the same car line), assembled in the same plant.

3. The provisions of Article 405 apply to the waivers of customs duties affecting automotive goods except where otherwise provided in this Chapter.

4. The list of recipients in Annex 1002.1 and the definition "class of vehicles" may be modified by agreement between the Parties.

Article 1006: Definitions

For purposes of this Chapter:

automotive goods means motor vehicles and those goods used or intended for use in motor vehicles;

Canadian manufacturer means a person who manufactures automotive goods within the territory of Canada;

class of vehicles means any one of the following:

a) minicompact automobiles - less than 85 cubic feet of passenger and luggage volume,

b) subcompact automobiles - between 85 and 100 cubic feet of passenger and luggage volume,

c) compact automobiles - between 100 and 110 cubic feet of passenger and luggage volume,

d) midsize automobiles - between 110 and 120 cubic feet of passenger and luggage volume,

e) large automobiles - 120 or more cubic feet of passenger and luggage volume,

f) trucks, or

g) buses.

NOTE: A vehicle that may have more than one possible use (e.g., vans, jeeps) would be defined as either an automobile or truck based on whether it is designed and marketed principally for the transport of passengers or the transport of cargo.

comparable arrangement means arrangements whereby waivers of customs duties are granted to Canadian manufacturers upon the fulfillment of conditions comparable to those described in the agreement referred to in Article 1001;

customs duty has the same meaning as in Article 410;

performance requirements has the same meaning as in Article 410;

used automobiles means used or second-hand automobiles and used or second-hand motor vehicles of all kinds that are manufactured prior to the calendar year in which importation into the territory of Canada is sought to be made; and

waiver of customs duties has the same meaning as in Article 410.

Annex 1002.1

Part One: Waivers of Customs Duties

The following Canadian manufacturers have qualified under the agreement referred to in Article 1001 and comparable arrangements or, on the basis of available information and projections, may be reasonably expected to qualify by the 1989 model year. The final list of those companies covered by the list below that so qualify will be provided by Canada to the United States of America within 90 days after the end of the 1989 model year.[1]

AMI Stego Limited
Advance Engineered Products Ltd.
Alforge Metals Corporation Limited
Almac Industries Ltd.
Amalgamated Metal Industries
American Motors (Canada) Inc.
American Motors (Canada) Limited
American Motors (Canada) Ltd.
Amertek Inc.
Atelier Gérard Laberge Inc.
Atlantic Truck and Trailer Limited
Atlas 2,000 Inc.
Atlas Hoist and Body Inc.
Aurora Cars Limited
Aurora Cars, a Division of Grove Ridge Industries Limited
B.K. & B. Truck Bodies Limited
B.T.L. Body Inc.
Babcock Motor Bodies Limited
Back Motor Bodies Ltd.
Belgium Standard Industries, A Division of Amertek Inc.

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[1] Waivers of customs duties shall cease being granted to any recipient listed in Part One of Annex 1002.1 if:

a) effective control of the conduct and operation of the recipient's business or substantial ownership of its assets is acquired, directly or indirectly, by a manufacturer of motor vehicles that is not a listed recipient; and

b) the fundamental nature, scope or size of the business of the recipient is significantly altered from the business of the recipient as carried on immediately prior to the acquisition of control or change in ownership.

Bevcam Inc.
Boîtes de Camion Alco Inc.
Boîtes de Camion GAM Inc.
Boîtes de Camion Saguenay (1987) Inc.
Bombardier Inc., Logistic Equipment Division
Bricklin Canada Limited
Burke Canada Inc.
CAMI Automotive Inc.
Canadian Blue Bird Coach Ltd.
Canadian Disposal Equipment Co. Ltd.
Canadian Kenworth Ltd.
Canassen Limited
Capital Disposal Equipment Inc.
Capital Truck Bodies
Care Equipment Manufacturing Co. Ltd.
Central Truck Body Co. Ltd.
Champion Truck Bodies Limited
Childs Truck Bodies Ltd.
Chrysler Canada Ltd.
Collins Manufacturing Company Limited
Commercial Truck Bodies
Commercial Vans Inc.
Consolidated Dynamics Limited
Contran Manufacturing Ltd.
County Truck & Trailer, a Division of Peterson Vans Inc.
Cusco Industries, Division of Cusco Fabricators Ltd.
D. & C. Roussy Industries Ltd.
DEL Equipment Limited, Division of Diesel Equipment Limited
Deluxe Van & Body Ltd.
Dempster Systems Limited
Dependable Truck and Tank Repairs Ltd.
Diesel Equipment Limited
Dominion Truck Bodies Ltd.
Dresser Canada, Inc.
Durabody & Trailer Limited
Dynamic Fiber Ltd.
Dynatel Inc.
Eastern Steel Products/ Frink Canada, Division of Compro Limited
Eastway Tank, Pump and Meter Co. Ltd.
Edmonton Truck Body Ltd.
Elcombe Engineering Ltd.
Equipement Labrie Ltée
F.A.D. Industries Inc.

F.W.D. Corporation
Fabricants de Boîtes de Camions BEL (1986) Inc.
Fanotech Industries Inc.
Fawcett Van & Stake Ltd.
Fleet Truck Bodies
Ford Motor Company of Canada Limited
Forman Tank & Welding, Ltd.
Fort Garry Industries Ltd.
Freightliner of Canada Ltd.
G. G. Cargo Trailer Industries Ltd.
G. & G. Welding
G.R. Patstone Ltd.
General Motors of Canada Limited
George C. Doerr Body and Trailer Co.
Girardin Corporation
Greyhound Canada Inc.
H.E. Brown Supply Co.
Hal-Vey Industries Ltd.
Hayes Manufacturing Company Limited
Hutchinson Industries
Ideal Body Limited
IMT Cranes Canada, Ltd.
Intercontinental Truck Body B.C. Inc.
Intercontinental Truck Body Ltd.
Intermeccanica International Inc.
J.H. Corbeil Inc.
Jauvin Truck Bodies Limited
Jean-Marc Vigeant Inc.
Kaiser Jeep of Canada Limited
Kamloops Allweld Aluminum Service Limited
L. Knight & Co. Ltd.
Lennoxvan (1986) Inc.
Les Carrosseries Fontaine (1979) Ltée
Les Entreprises Michel Corbeil Inc.
Les Industries Savard Inc.
Mack Trucks Manufacturing Company of Canada Limited
Marathon Electric Vehicles Inc.
McEwan-Tougard Industries Limited
MCI Limited
Minoru Truck Bodies Ltd.
Mond Industries Limited
Morrison & Co. Ltd.
Motor Coach Industries Limited

Multi-Vans Inc.
Navistar International Corporation Canada
New Flyer Industries Limited
Off-Highway Vehicles: Ceco Sales Limited
Off-Highway Vehicles: Cypress Equipment Ltd.
Off-Highway Vehicles: Euclid Canada
Off-Highway Vehicles: General Motors of Canada Limited
Off-Highway Vehicles: General Motors of Canada Limited, Diesel Division
Off-Highway Vehicles: Mack Trucks Manufacturing Company of Canada Limited
Off-Highway Vehicles: Paccar Canada Ltd.
Off-Highway Vehicles: Pacific Truck & Trailer Ltd.
Off-Highway Vehicles: Ume Canada
Off-Highway Vehicles: Unit Rig & Equipment Co. (Canada) Ltd.
Off-Highway Vehicles: Wabco Equipment of Canada
Ontario Bus Industries Limited
Ontario Fiberglass Production O/B 536794 Ont. Ltd.
Ottawa Truck Bodies Ltée/Ltd.
Paccar Canada Ltd.
Parco-Hesse Corporation Inc.
Peabody Myers (Canada), Division of Peabody International Canada Ltd.
Pettibone Canada Limited
Phil Larochelle (1977)
Phil Larochelle Equipment Inc.
Philwood Industries Ltd.
Pitman Manufacturing Co. Inc.
PK Welding & Fabricators Limited
Pollock Truck Bodies, Division of Pollock Rentals Limited
Prevost Car Inc.
Québec Truck Bodies Boîtes de Camions Inc.
R & M Manufacturing Ltd.
Raytel Equipment Ltd.
Rebel Steel Industries Ltd.
Red Top Equipment Company Limited
Réfrigération Thermo King Montréal Inc.
Reliance Truck and Equipment
Remtec Inc.
Roberts Truck Equipment Ltd.
Rubber Railway Company Ltd.
Sentinal Vehicles Limited
Sheller-Globe of Canada Limited

Sicard Inc.
SMI Industries Canada Ltd.
SMI Industries Limited
Soudure G. & G. Ltée
Sturdy Truck Body (1972) Limited
Superior Bus Mfg. Ltd.
Supravan Ltée
Swartz Motor Bodies Limited
Teal Manufacturing Ltd.
The Electric & Gas Welding Co. Limited
Thermo King Western (Calgary) Ltd.
Thermo King Western Ltd.
Thomas Built Buses of Canada Limited
Tipping Motor Bodies Limited
Toronto Kitchen Equipment Limited
Tor Truck Corporation
Trailmobile Group of Companies Ltd.
Transit Van Bodies Inc.
Triangle Truck Equipment Ltd.
Triple E Industries Ltd.
Truck Equipment & Service Co. Ltd.
UTDC Inc.
Universal Carrier Manufacturing Ltd.
Universal Handling Equipment Co.
Universal Sales Limited
Universal Truck Body Ltd.
Univision Industries Limited
V. Lacasse Ltée
Vennes Boîte de Camion Inc.
Volvo Canada Ltd.
Vulcan Equipment Company Limited
W.H. Olsen Manufacturing Co. Ltd.
Wajax UEC Limited
Walinga Body & Coach Limited
Walter Canada Inc.
Walter Motor Trucks of Canada Limited
Welles Corporation Limited
Westank-Willock, a Division of Willock Industries Ltd.
Western Rock Bit Company Limited
Western Star Trucks Inc.
Western Utilities Equipment Co. Ltd.
Wheels, Brakes and Equipment Limited
White Motor Corporation of Canada Limited

Wilcox Bodies Limited
Wilson Motor Bodies Ltd.
Wilson's Truck Bodies, a Division of L & A Machine (N.S.) Limited
Wilson's Truck Body Shop Ltd.
Wiltsie Truck Bodies Ltd.

Part Two: Export-Based Waivers of Customs Duties

The following Canadian manufacturers have qualified for export-based waivers of customs duties or, on the basis of available information and projections, may be reasonably expected to qualify by the date of entry into force of this Agreement. Canada shall provide the United States of America with the final list of those companies on this list that have qualified as of the date of entry into force of this Agreement.

BMW Canada Inc.
Fiat Canada
Honda Canada Inc.
Hyundai Auto Canada Inc.
Jaguar Canada Inc.
Mazda Canada Inc.
Mercedes-Benz of Canada Inc.
Nissan Automobile Company (Canada) Ltd.
Peugeot Canada Ltée/Ltd.
Saab-Scania Canada Inc.
Subaru Auto Canada Limited
Toyota Canada Inc.
Volkswagen Canada Inc.

Part Three: Production-Based Waivers of Customs Duties

The following Canadian manufacturers have qualified for production-based waivers of customs duties or, on the basis of available information and projections, may be reasonably expected to qualify by the date of entry into force of this Agreement. The final list of those companies covered by the list below that so qualify will be provided by Canada to the United States of America within 90 days after the end of the 1989 model year.

CAMI Automotive Inc. [2]
Honda Canada Inc./Honda of Canada Mfg., Inc.
Hyundai Auto Canada Inc.
Toyota Motor Manufacturing Canada Inc.

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[2] If it fails to qualify under Part One.

Chapter Eleven: Emergency Action

A traditional feature of most trade agreements is the ability of the Parties temporarily to impose restrictions (such as quotas or surcharges) otherwise inconsistent with the agreement to deal with surges in imports causing serious injury to domestic producers. The ability to impose such emergency restrictions is often the key to gaining acceptance for the liberalizing provisions of an agreement. The challenge is to circumscribe the right to take emergency action in such a manner as to prevent abuse. In a free-trade agreement, once investors have taken steps to take advantage of the new opportunities, their expectations should not be frustrated by others who have not adjusted.

In Chapter Eleven, the two governments have agreed to stringent standards for the application of emergency safeguards to bilateral trade. For the transition period only (i.e., until the end of 1998), either country may respond to serious injury to domestic producers resulting from the reduction of tariff barriers under the Agreement with a suspension of the duty reductions for a limited period of time or a return to the most-favoured-nation tariff level (i.e., the current tariff which may in future be reduced through multilateral negotiations) . No measure can last more than three years or extend beyond December 31, 1998. Any such action will also be subject to compensation by the other country, for example, through accelerated duty elimination on another product.

After the transition period, no measure may be taken to counteract a surge resulting from the operation of the agreement except by mutual consent.

Additionally, Canada and the United States have agreed to exempt each other from global actions under GATT Article XIX except where the other's producers are important contributors to the injury caused by a surge of imports from all countries. This will mean that Canadian companies will no longer need to fear being sideswiped by an emergency action aimed largely at other suppliers, such as has happened in the case of specialty steel. Should either government take global emergency action, however, companies in the other country will not be allowed to rush in and take advantage of the situation. Any surge in exports in those circumstances may lead to their inclusion in the global action. Should the other Party be included in a global action either initially or subsequently, its exports will be protected against *reductions below the trend line of previous bilateral trade with allowance for growth. Again, any emergency measures applied between the two countries will be subject to compensation.*

For greater certainty and in order to help guide any determination by domestic tribunals as to whether or not the other country is contributing importantly to any injury justifying a global measure, Article 1102 contains specific thresholds. Imports below five percent of total imports will not generally be considered to be substantial and will be excluded from any action. Imports above ten percent would be considered substantial and would be examined further to see whether they were an important cause of the serious injury from imports.

Any dispute as to whether the conditions for imposing a bilateral measure, for including the other party in a global action or for the adequacy of compensation will be subject to binding arbitration after the action has been taken. Failure to meet the requirements would result in removal of the measure and, if appropriate, compensation.

The provisions of this Chapter are important in establishing a more predictable climate for investors in both countries to take advantage of the agreement, secure in the knowledge that their access to the other market will not be impaired by capricious action stemming from domestic complaints. They will be able to benefit from clear rules backed up by binding arbitration.

Chapter Eleven

Emergency Action

Article 1101: Bilateral Actions

1. Subject to paragraphs 2 and 4, and during the transition period only, if a good originating in the territory of one Party is, as a result of the reduction or elimination of a duty provided for in Chapter Four, being imported into the territory of the other Party in such increased quantities, in absolute terms, and under such conditions so that the imports of such good from the exporting Party alone constitute a substantial cause of serious injury to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to remedy the injury:

a) suspend the further reduction of any rate of duty provided for under this Agreement on such good;

b) increase the rate of duty on such good to a level not to exceed the lesser of:

i) the most-favoured-nation (MFN) rate of duty in effect at that time; or

ii) the MFN rate of duty in effect on the day immediately preceding the date of the entry into force of this Agreement; or

c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN rate of duty that was in effect on such good for the corresponding season immediately prior to the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to an action authorized by paragraph 1:

a) notification and consultation shall precede the action;

b) no action shall be maintained for a period exceeding three years or, except with the consent of the other Party, have effect beyond the expiration of the transition period;

c) no action shall be taken by either Party more than once during the transition period against any particular good of the other Party; and

d) upon the termination of the action, the rate of duty shall be the rate which would have been in effect but for the action.

3. A Party may institute a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

4. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to the other Party or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree upon compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the action taken by the importing Party under paragraph 1.

Article 1102: Global Actions

1. With respect to an emergency action taken by a Party on a global basis, the Parties shall retain their respective rights and obligations under Article XIX of the *General Agreement on Tariffs and Trade* subject to the requirement that a Party taking such action shall exclude the other Party from such global action unless imports from that Party are substantial and are contributing importantly to the serious injury or threat thereof caused by imports. For purposes of this paragraph, imports in the range of five percent to ten percent or less of total imports would normally not be considered substantial.

2. A Party taking an emergency global action, from which the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include the other Party in the global action in the event of a surge in imports of such good from the other Party that undermines the effectiveness of such action.

3. A Party shall, without delay, provide notice to the other Party of the institution of a proceeding that may result in an emergency action under paragraphs 1 or 2.

4. In no case shall a Party take an action authorized under paragraphs 1 or 2, imposing restrictions on a good:

a) without prior notice and consultation; and

b) that would have the effect of reducing imports of such good of the other Party below the trend of imports over a reasonable recent base period with allowance for growth.

5. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to the other Party or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree upon compensation, the exporting Party may take action having trade effects substantially equivalent to the action taken by the importing Party under paragraph 1.

Article 1103: Arbitration

Articles 1806 (Arbitration) and 1807 (Panel Procedures) shall not apply with respect to proposed actions under this Chapter. Any dispute with respect to actual actions not resolved by consultation shall be referred to arbitration under Article 1806.

Article 1104: Definitions

For purposes of this Chapter:

contribute importantly means an important cause, but not necessarily the most important cause, of serious injury from imports;

emergency action means any emergency action taken after the entry into force of this Agreement; and

surge means a significant increase in imports over the trend for a reasonable recent base period for which data are available.

Chapter Twelve: Exceptions for Trade in Goods

As with the Chapter on emergency action, most trade agreements contain general exceptions. Such exceptions recognize that governments must retain some freedom of action to protect their legitimate national interests. In effect, they constitute a buffer zone without which binding international agreements could not be concluded between sovereign nations. For the part of the agreement dealing with trade in goods, the two governments have agreed to incorporate the provisions of GATT Article XX and the grandfather provisions of the GATT's Protocol of Provisional Application. Most free-trade agreements have followed a similar practice.

GATT Article XX can justify import and export control measures, otherwise prohibited by the Agreement, for the following reasons:

- *necessary to protect public morals (such as prohibitions on trade in pornographic material);*
- *necessary to protect human, animal or plant life or health (such as measures to protect the environment or endangered species);*
- *relating to trade in gold or silver;*
- *necessary to ensure compliance with domestic laws and regulations not otherwise inconsistent with the GATT (such as product standards);*
- *relating to the products of prison labour (producers should not have to compete with goods produced with prison labour);*
- *necessary to protect national treasures of artistic, historic or archaeological value; and*
- *undertaken in pursuance of an international commodity agreement (such as an international wheat or tin agreement).*

Article XX also includes provisions relating to the preservation of commodities in short supply. These have been modernized and addressed in Chapter Four (Border Measures) in the context of obligations relating to export measures and in Chapter Nine for energy goods.

Finally, the provisions of Article XX are not absolute. They are subject to the requirement that they not be applied so as to constitute an arbitrary, unjustifiable or disguised restriction on trade. By virtue of their incorporation in the bilateral agreement, any future dispute about the application of any measure on bilateral trade justified under this article would be subject to the much better dispute resolution mechanism of this Agreement.

GATT's Protocol of Provisional Application was the instrument used by the original twenty-three signatories to bring the GATT into force. The signatories agreed that they would fully accept certain obligations insofar as they were not inconsistent with existing legislation on January 1, 1948. The most important policy swept up in the Protocol is the grandfathering of the United States Jones Act providing protection for the United States marine industry.

Chapter Twelve also includes a number of miscellaneous exceptions to the trade in goods chapters. The two governments have agreed to grandfather existing controls on the export of logs. In addition, East Coast provinces will be able to maintain existing provincial controls on the export of unprocessed fish. Both provisions will allow Canada to maintain policies aimed at upgrading these resources before export. With respect to restraints on the export of unprocessed fish caught off the coast of British Columbia, the two governments are pursuing, outside the agreement, their rights and obligations under GATT, in light of the recent panel finding. Finally, Article 1204 grandfathers, subject to each Party's GATT rights, existing practices respecting the internal sale and distribution of beer.

Chapter Twelve

Exceptions for Trade in Goods

Article 1201: GATT Exceptions

Subject to the provisions of Articles 409 and 904, the provisions of Article XX of the *General Agreement on Tariffs and Trade* (GATT) are incorporated into and made a part of this Part of this Agreement.

Article 1202: Protocol of Provisional Application

Any measure of either Party that remains exempt from the obligations of the GATT by virtue of subparagraph 1(b) of the Protocol of Provisional Application of the GATT, shall to the same extent be exempt from the obligations of this Part of this Agreement.

Article 1203: Miscellaneous Exceptions

The provisions of this Part shall not apply to:

a) controls by the United States of America on the export of logs of all species;

b) controls by Canada on the export of logs of all species; and

c) controls by Canada on the export of unprocessed fish pursuant to the following existing statutes:

   (i) *New Brunswick Fish Processing Act,* 1982 and *Fisheries Development Act,* 1977;
   (ii) *Newfoundland Fish Inspection Act,* 1970;
   (iii) *Nova Scotia Fisheries Act,* 1977;
   (iv) *Prince Edward Island Fish Inspection Act,* 1956; and
   (v) *Quebec Marine Products Processing Act,* No. 38, 1987.

Article 1204: Beer and Malt Containing Beverages

1. With respect to measures related to the internal sale and distribution of beer and malt containing beverages, Chapter Five shall not apply to:

   a) a non-conforming provision of any existing measure;

   b) the continuation or prompt renewal of a non-conforming provision of any existing measure; or

   c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of Chapter Five.

2. The Party asserting that paragraph 1 applies shall have the burden of establishing the validity of such assertion.

3. Existing measure in paragraph 1 refers to a measure in force as of October 4, 1987.

Article 1205: GATT Rights

The Parties retain their rights and obligations under GATT and agreements negotiated under the GATT with respect to matters exempt from this Part under Articles 1203 and 1204.

Part Three
Government Procurement

The provisions on government procurement are contained in a separate part because a number of the general obligations respecting trade in goods do not apply, such as the national treatment obligations of Chapter Five or the rules of origin of Chapter Three. The coverage, however is limited to goods, or services incidental to the delivery of goods.

Chapter Thirteen: Government Procurement

Chapter Thirteen marks important new progress in expanding the market opportunities for suppliers of goods to government markets. Canadians have proven themselves competitive suppliers of many commercial and industrial products to the United States. These include vehicles, scientific apparatus, aircraft equipment, mineral products, industrial machinery, plastic, rubber and leather products, electrical machinery, chemical products, power generation machinery, and heating and lighting equipment. The potential for increased sales by Canadian suppliers should thus be distributed widely across all regions of Canada.

The chapter broadens and deepens the obligations both countries have undertaken in the GATT Code, commits each country to work toward the multilateral liberalization of government procurement and to negotiate further improvements in the bilateral agreement once multilateral negotiations are concluded.

The chapter increases the amount of procurement open for competition between Canadian and US suppliers in each other's market. It lowers the threshold in the GATT Code from U.S.$171,000 (about CDN$238,000), for purchases by Code-covered entities of covered goods to U.S.$25,000 (about CDN$33,000). All government purchases above this new threshold will be open to competition unless they are reserved for small business or excluded for reasons of national security.

In addition, the Chapter makes substantial improvements upon the GATT Code in transparency procedures. It establishes jointly agreed principles, contained in Annex 1305.3, governing bid-challenge procedures to ensure equitable and effective treatment for *potential suppliers. An impartial reviewing authority will investigate situations where suppliers believe they have been unfairly treated and will ensure a timely decision. The reviewing authority will also be able to recommend changes in procurement procedures in accordance with the Agreement.*

There are detailed provisions for the regular exchange of government procurement information. This will enable careful monitoring of the implementation of the chapter on an annual basis and will assist in resolving problems and providing the foundation for further negotiations in the GATT and bilaterally.

Annex 1304.3 reproduces the GATT Annex setting out for each country the purchasing entities whose purchases above the threshold are covered by both the GATT and this agreement.

For the United States, 11 out of 13 government departments are covered by the GATT Code, with the only exceptions being the Departments of Energy and Transport. A total of 40 governmental agencies and commissions, as well as NASA and the General Services Administration (the common government purchasing agency) are included. Department of Defense purchases are covered within certain defined product categories such as vehicles, engines, industrial equipment and components, computer software and equipment, and commercial supplies.

For Canada, 22 government departments and 10 agencies are covered. Department of National Defence purchases of certain defined products, mainly non-military, are also covered. The Departments of Transport, Communications, and Fisheries and Oceans are not included.

Canada's access to U.S. defence procurement of military goods under the Defence Production Sharing Arrangements is not affected by this chapter.

PART THREE
GOVERNMENT PROCUREMENT

Chapter Thirteen

Government Procurement

Article 1301: Objective

1. In the interest of expanding mutually beneficial trade opportunities in government procurement based on the principles of non-discrimination and fair and open competition for the supply of goods and services, the Parties shall actively strive to achieve, as quickly as possible, the multilateral liberalization of international government procurement policies to provide balanced and equitable opportunities.

2. As a further step toward multilateral liberalization and improvement of the GATT *Agreement on Government Procurement,* which includes the annexes thereto (the Code), the Parties shall undertake the obligations of this Chapter.

Article 1302: Reaffirmation of Existing Obligations

The Parties reaffirm their rights and obligations under the provisions of the Code.

Article 1303: Scope

1. For procurements covered by this Chapter, the Code, as modified or supplemented by this Chapter, is incorporated into and made a part of this Chapter.

2. Any modifications to the Code shall automatically be incorporated into, and made a part of, this Chapter on the date that these modifications take effect for the Parties unless the Parties otherwise agree.

3. In the event of any inconsistency between the provisions of the Code and the obligations of this Chapter, the obligations of this Chapter shall prevail to the extent of the inconsistency.

Article 1304: Coverage

1. The obligations of this Chapter shall apply only to procurements specified in Code Annex I, including the general notes thereto, for the United States of America and Canada respectively, that are above a threshold of twenty-five thousand US dollars and the equivalent in Canadian dollars, as the case may be, and below the Code threshold.

2. Canada will calculate, and convert the value of the threshold of (US)$25,000 into its own national currency and notify the value to the United States of America, it being understood that these calculations will be based on the official conversion rates of the Bank of Canada. The conversion rates, for purposes of this Chapter, will be the average of the weekly values of the Canadian dollar in terms of the US dollar over the two-year period preceding October 1, with effect from January 1. The threshold in Canadian currency will be fixed for January 1, 1989, on the basis of calculations for the preceding one-year period, and thereafter it will be fixed for two-year periods, on the basis of calculations for the preceding two-year period.

3. Code Annex I is incorporated into and made a part of this Chapter and is reproduced in Annex 1304.3. Any further modifications to Annex I shall automatically be incorporated into and made a part of Annex 1304.3 on the date that such modifications take effect for the Parties unless the Parties otherwise agree.

Article 1305: Expanded Procedural Obligations

1. With respect to all measures regarding government procurement covered by this Chapter, each Party shall accord to eligible goods treatment no less favourable than the most favourable treatment accorded to its own goods.

2. Each Party shall, for its procurements covered by this Chapter:

a) provide all potential suppliers equal access to pre-solicitation information and with equal opportunity to compete in the pre-notification phase;

b) provide all potential suppliers equal opportunity to be responsive to the requirements of the procuring entity in the tendering and bidding phase;

c) use decision criteria in the qualification of potential suppliers, evaluation of bids and awarding of contracts, that:

   i) best meet the requirements specified in the tender documentation,

   ii) are free of preferences in any form in favour of its own goods, and

   iii) are clearly specified in advance; and

d) promote competition by making available information on contract awards in the post-award phase.

3. Each Party shall introduce and maintain, in accordance with the principles contained in Annex 1305.3, equitable, timely, transparent and effective bid challenge procedures for potential suppliers of eligible goods.

4. In implementing its procedural obligations under this Chapter, each Party shall provide sufficient transparency in the procurement process to ensure that the bid challenge system operates effectively. Accordingly, each Party shall ensure that complete documentation and records, including a written record of all communications substantially affecting each procurement, are maintained in order to allow verification that the procurement process was carried out in accordance with the obligations of this Chapter.

5. Potential suppliers of either Party shall have reasonable access to information substantially affecting the procurement, subject to laws and regulations of either Party relating to confidentiality.

6. Each Party shall take all necessary steps to ensure the efficient administration of the obligations under this Chapter.

7. Each Party shall use the publications it has specified in the Code, or other publications as mutually agreed, to comply with the publication requirements of this Chapter.

Article 1306: Monitoring and Exchange of Information

1. The Parties shall cooperate in monitoring the implementation, administration and enforcement of the obligations of this Chapter.

2. In addition to the information requirements of the Code, the Parties shall collect and exchange annual statistics on the procurements covered by this Chapter. Statistics and other information shall be reported on the basis of the eligible goods. Such reports shall identify the country of origin of the goods covered under this Chapter and contain the following information with respect to contracts awarded:

a) total government procurement by procuring entity and product category, according to their respective federal goods identification schedules; and

b) single tendering statistics for each entity. Single tendering information on product categories shall be supplied upon request.

3. Each Party shall give sympathetic consideration to a request from the other Party for the exchange of additional information on a reciprocal basis.

Article 1307: Further Negotiations

The Parties shall undertake bilateral negotiations with a view to improving and expanding the provisions of this Chapter, not later than one year after the conclusion of the existing multilateral renegotiations pursuant to Article IX:6(b) of the Code, taking into account the results of these renegotiations.

Article 1308: National Security

Notwithstanding Article 2003 (National Security), for purposes of this Chapter the provisions of Article VIII of the Code shall apply.

Article 1309: Definitions

For purposes of this Chapter:

eligible goods means unmanufactured materials mined or produced in the territory of either Party and manufactured materials manufactured in the territory of either Party if the cost of the goods originating outside the territories of the Parties and used in such materials is less than 50 percent of the cost of all the goods used in such materials; and

territory of a Party means

a) for the United States of America, the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, including its foreign trade zones, but does not include trust territories or leased bases, and
b) for Canada, the territory to which its customs laws apply.

Annex 1304.3+

Entities Covered++

Canada

1. Department of Agriculture
2. Department of Consumer and Corporate Affairs
3. Department of Energy, Mines and Resources including:
    - Atomic Energy Control Board
    - Energy Supplies Allocation Board
    - National Energy Board
4. Department of Employment and Immigration including:
    - Immigration Appeal Board
    - Canada Employment and Immigration Commission
5. Department of External Affairs
6. Department of Finance including:
    - Department of Insurance
    - Anti-Dumping Tribunal
    - Municipal Development and Loan Board
    - Tariff Board
7. Department of the Environment
8. Department of Indian Affairs and Northern Development
9. Department of Regional Industrial Expansion including:
    - Machinery Equipment Advisory Board
10. Department of Justice including:
    - Canadian Human Rights Commission
    - Statute Revision Commission
    - Supreme Court of Canada
11. Department of Labour including:
    - Canada Labour Relations Board
12. Department of National Defence* including:
    - Defence Construction (1951) Limited

+ This Annex reproduces verbatim the annexes for Canada and the United States of America in the Code. All references are those in the Code except for the footnotes marked with + symbols that are not contained in the Code but are added for explanatory purposes.

++ The entities in this Annex listed for Canada and their successor entities are included in the coverage of this Agreement.

13. Department of National Health and Welfare including:
    - Medical Research Council
    - Office of the Coordinator, Status of Women
14. Department of National Revenue
15. Department of Post Office [1]
16. Department of Public Works
17. Department of Secretary of State of Canada including:
    - National Library
    - National Museums of Canada
    - Public Archives
    - Public Service Commission
18. Department of Solicitor General including:
    - Royal Canadian Mounted Police*
    - Correctional Service of Canada
    - National Parole Board
19. Department of Supply and Services (on its own account) including:
    - Canadian General Standards Board
    - Statistics Canada
20. Department of Veterans Affairs including:
    - Veterans Land Administration
21. Auditor General of Canada
22. National Research Council
23. Privy Council Office including:
    - Canada Intergovernmental Conference Secretariat
    - Commissioner of Official Languages
    - Economic Council
    - Public Service Staff Relations Board
    - Federal Provincial Relations Office
    - Office of the Governor General's Secretary
24. National Capital Commission
25. Ministry of State for Science and Technology including:
    - Science Council
26. National Battlefields Commission
27. Office of the Chief Electoral Office
28. Treasury Board
29. Canadian International Development Agency (on its own account)
30. Natural Sciences and Engineering Research Council

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[1] The Department of the Post Office is on this List of entities on the understanding that, should it cease to be a governed department, the provisions of Article IX, paragraph 5(b) would not apply.

31. Social Sciences and Humanities Research Council
32. Fisheries Price Support Board

* The following products purchased by the Department of National Defence and the RCMP are included in the coverage of this Agreement, subject to the application of paragraph 1 of Article VIII.

(Numbers refer to the Federal Supply Classification Code)

22. Railway Equipment
23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tyres and Tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working machinery
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment
    (except 4220 Marine life-saving and diving equipment
    4230 Decontaminating and impregnating equipment)
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors
45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials

61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and Laboratory equipment
    except (6615: Automatic pilot mechanisms and airborne gyro components
    6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, visible record equipment and automatic data processing equipment
75. Office supplies and devices
76. Books, maps and other publications
    (except 7650: Drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
91. Fuels, lubricants, oils and waxes
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products
99. Miscellaneous

General Note:

Notwithstanding the above, this Agreement does not apply to contracts set aside for small businesses.

United States

The following entities+++ are included in the coverage of this Agreement by the United States:

1. Department of Agriculture (This Agreement does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes)
2. Department of Commerce
3. Department of Education
4. Department of Health and Human Services
5. Department of Housing and Urban Development
6. Department of Interior (excluding the Bureau of Reclamation)
7. Department of Justice
8. Department of Labour
9. Department of State
10. United States International Development Co-operation Agency
11. Department of the Treasury
12. General Services Administration (Purchases by the National Tools Center are not included; purchases by the Regional 9 Office of San Francisco, California are not included)
13. National Aeronautics and Space Administration (NASA)
14. Veterans Administration
15. Environmental Protection Agency
16. United States Information Agency
17. National Science Foundation
18. Panama Canal Company and Canal Zone Government
19. Executive Office of the President
20. Farm Credit Administration
21. National Credit Union Administration
22. Merit Systems Protection Board
23. ACTION
24. United States Arms Control and Disarmament Agency
25. Civil Aeronautics Board
26. Federal Home Loan Bank Board
27. National Labour Relations Board
28. National Mediation Board
29. Railroad Retirement Board
30. American Battle Monuments Commission

+++ and their successor entities.

31. Federal Communications Commission
32. Federal Trade Commission
33. Inter-State Commerce Commission
34. Securities and Exchange Commission
35. Office of Personnel Management
36. United States International Trade Commission
37. Export-Import Bank of the United States
38. Federal Mediation and Conciliation Service
39. Selective Service System
40. Smithsonian Institution
41. Federal Deposit Insurance Corporation
42. Consumer Product Safety Commission
43. Equal Employment Opportunity Commission
44. Federal Maritime Commission
45. National Transportation Safety Board
46. Nuclear Regulatory Commission
47. Overseas Private Investment Corporation
48. Administrative Conference of the United States
49. Board for International Broadcasting
50. Commission on Civil Rights
51. Commodity Futures Trading Commission
52. The Maritime Administration of the Department of Transportation
53. The Peace Corps
54. Department of Defense (excluding Corps of Engineers)

This Agreement will not apply to the following purchases of the DOD:

(a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstaffs, flagpoles, and flagstaff trucks;
(b) FSC 84 - all elements other than sub-class 8460 (luggage);
(c) FSC 89 - all elements other than sub-class 8975 (tobacco products)
(d) FSC 2310 - (buses only);
(e) Specialty metals, defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the

following elements: aluminium, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel,and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or, (4) zirconium base alloys;

(f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;

(g) FSC 51;

(h) Following FSC categories are not generally covered due to application of Article VIII, paragraph 1:
10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59, 95

This Agreement will generally apply to purchases of the following FSC categories subject to United States Government determinations under the provisions of Article VIII, paragraph 1 .

22. Railway Equipment
23. Motor Vehicles, Trailers, and Cycles (except buses in 2310)
24. Tractors
25. Vehicular Equipment Components
26. Tyres and Tubes
29. Engine Accessories
30. Mechanical Power Transmission Equipment
32. Woodworking Machinery and Equipment
34. Metalworking Machinery
35. Service and Trade Equipment
36. Special Industry Machinery
37. Agricultural Machinery and Equipment
38. Construction, Mining, Excavating, and Highway Maintenance Equipment
39. Materials Handling Equipment
40. Rope, Cable, Chain and Fittings
41. Refrigeration and Air Conditioning Equipment
42. Fire Fighting, Rescue and Safety Equipment
43. Pumps and Compressors
44. Furnace, Steam Plant, Drying Equipment and Nuclear Reactors
45. Plumbing, Heating and Sanitation Equipment
46. Water Purification and Sewage Treatment Equipment
47. Pipe, Tubing, Hose and Fittings
48. Valves
49. Maintenance and Repair Shop Equipment

52. Measuring Tools
53. Hardware and Abrasives
54. Prefabricated Structures and Scaffolding
55. Lumber, Millwork, Plywood and Veneer
56. Construction and Building Materials
61. Electric Wire, and Power and Distribution Equipment
62. Lighting Fixtures and Lamps
63. Alarm and Signal Systems
65. Medical, Dental, and Veterinary Equipment and Supplies
66. Instruments and Laboratory Equipment
67. Photographic Equipment
68. Chemicals and Chemical Products
69. Training Aids and Devices
70. General Purpose ADPE, Software, Supplies and Support Equipment
71. Furniture
72. Household and Commercial Furnishings and Appliances
73. Food Preparation and Serving Equipment
74. Office Machines, Visible Record Equipment and ADP Equipment
75. Office Supplies and Devices
76. Books, Maps and Other Publications
77. Musical Instruments, Phonographs, and Home Type Radios
78. Recreational and Athletic Equipment
79. Cleaning Equipment and Supplies
80. Brushes, Paints, Sealers and Adhesives
81. Containers, Packaging and Packing Supplies
85. Toiletries
87. Agricultural Supplies
88. Live Animals
91. Fuels, Lubricants, Oils and Waxes
93. Non-metallic Fabricated Materials
94. Non-metallic Crude Materials
96. Ores, Minerals and their Primary Products
99. Miscellaneous

General Notes

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.

2. Pursuant to Article I, paragraph 1(a), transportation is not included in services incidental to procurement contracts.

Annex 1305.3

Principles Guiding Bid Challenge Procedures

In order to promote fair, open and impartial procurement procedures, the Parties shall maintain bid challenge procedures for procurements covered by this Chapter in accordance with the principles that follow.

a) Bid challenges may concern any aspect of the procurement process covered by this Chapter leading up to and including the contract award.

b) Prior to initiating a bid challenge, a supplier should be encouraged to seek a resolution of any complaint with the contracting authority.

c) Whether or not a supplier has resorted to subparagraph (b) or upon unsuccessful resolution of a complaint pursuant to subparagraph (b), the supplier shall be allowed to submit a bid challenge or seek any other relief available to such supplier.

d) The procurement body for each entity covered by this Chapter, with respect to its covered procurements, shall accord impartial and timely consideration to any complaint or bid challenge by any supplier.

e) A reviewing authority with no substantial interest in the outcome of the procurement shall have responsibility for receiving and deciding bid challenges.

f) Upon receipt of a bid challenge, the reviewing authority shall expeditiously proceed to investigate the challenge and may delay the proposed award pending resolution of the bid challenge except in cases of urgency or where the delay would be prejudicial to the public interest. The reviewing authority shall determine the appropriate remedy, which may include re-evaluating offers, recompeting the contract, or terminating the contract.

g) The reviewing authority should be authorized to make recommendations in writing to contracting authorities respecting all facets of the procurement process, including recommendations for changes in procedures in order to bring them into conformity with the obligations of this Chapter. The procurement body or covered entities shall normally follow such recommendations.

h) Decisions of the reviewing authority respecting bid challenges shall be provided in writing in a timely fashion and made available to the Parties and all interested persons.

i) Each Party shall specify in writing and shall make generally available to all potential suppliers, all bid challenge procedures, including general time frames maintained or introduced by the procurement body for each entity with respect to bid challenge procedures.

j) Each Party may modify its bid challenge procedures from time to time provided such modifications are in conformity with this Chapter.

Part Four
Services, Investment and Temporary Entry

Part Four contains the three ground-breaking chapters: services, business travel and investment.

Chapter Fourteen: Services

Trade in services represents the frontier of international commercial policy in the 1980s. Dynamic economies are increasingly dependent on the wealth generated by service transactions. International trade in services, of course, does not take place in a vacuum without rules and regulations. What it has lacked is a general framework of rules incorporating principles of general application such as those embodied in the GATT for trade in goods. Chapter Fourteen provides, for the first time, a set of disciplines covering a large number of service sectors.

The issue is also more than a matter of opening up service markets. It is no longer possible to talk about free trade in goods without talking about free trade in services because trade in services is increasingly mingled with the production, sale, distribution and service of goods. Companies today rely on advanced communications systems to co-ordinate planning, production, and distribution of products. Computer software helps to design new products. Some firms engage in-house, accountants, and engineers, some have 'captive' subsidiaries to handle their insurance and finance needs. In other words, services are both inputs for the production of manufactured goods (from engineering design to data processing) and necessary complements in organizing trade (from financing and insuring the transaction to providing installation and after-sales maintenance, especially critical for large capital goods).

The basic economic efficiency and competitiveness gains expected from the removal of barriers to trade in goods between Canada and the United States also apply to the service sectors. To achieve the same economic gains in services it was necessary to focus the negotiations on the nature of regulations that constitute trade barriers. In some cases, the focus was the right of establishment where such a right is an economic pre-condition to supplying the service, for example, travel agencies. In other cases, the opportunities to foreigners to meet the *professional licensing standards imposed by countries as a condition to offering the service, for example, architecture, was the focus.*

In Article 1402, the two governments agree to extend the principle of national treatment to the providers of a list of commercial services established in Annex 1408. With the exception of transportation, basic telecommunications (such as telephone service) doctors, dentists, lawyers, childcare and government-provided services (health, education and social services) most commercial services are covered. This means that Canada and the United States have agreed not to discriminate between Canadian and American providers of these services. Each will be treated the same. But this is not an obligation to harmonize. If Canada chooses to treat providers of one service differently than does the United States, it is free to do so, as long as it does not discriminate between Americans and Canadians. Each government also remains free to choose whether or not to regulate and how to regulate.

The obligation to extend national treatment also does not mean the treatment has to be the same in all respects. For example, a party may accord different treatment for legitimate purposes such as consumer protection or safety, so long as the treatment is equivalent in effect. Additionally, regulations cannot be used as a disguised restriction on trade. Article 1403, for example, specifies that either government remains free to license and certify providers of specific services, but must ensure that such licensing requirements do not act as a discriminatory barrier for persons of the other party to meet.

The obligations are prospective, i.e., they do not require either government to change any existing laws and practices. Rather, the parties agree that in changing existing regulations for covered services, they will be guided by the obligation not to make such regulations any more discriminatory than they are already. However, any new regulations for covered services will have to conform fully to the national treatment obligation.

While there are no rules of origin for the services chapter, as there are for trade in goods, the obligations are meant to extend benefits to Canadians and Americans. Article 1406, therefore, provides that either party remains free to deny the benefits of this chapter if it can demonstrate that a service is in fact being provided by a provider who is a national of a third party. At the same time, neither *government is obliged to discriminate against providers of services from third parties.*

Sectoral annexes clarify these general obligations for three service sectors: architecture, tourism and enhanced telecommunications and computer services. Article 1405 provides scope for the two governments to negotiate more sectoral annexes in the future.

Transportation services (marine, air, trucking, rail and bus modes) are not covered by the agreement. In effect, existing arrangements, such as ICAO and the various air bilateral agreements, will continue to govern bilateral relationships.

The new, general rules adopted for trade in services are a trail blazing effort and could lay the foundation for further work multilaterally. Applying these rules prospectively will ensure that new discrimination will not be introduced. This constitutes a major step toward ensuring that open and competitive trade in services continues between the two countries.

PART FOUR
SERVICES, INVESTMENT AND TEMPORARY ENTRY

Chapter Fourteen

Services

Article 1401: Scope and Coverage

1. This Chapter shall apply to any measure of a Party related to the provision of a covered service by or on behalf of a person of the other Party within or into the territory of the Party.

2. In this Chapter, provision of a covered service includes:

a) the production, distribution, sale, marketing and delivery of a covered service and the purchase or use thereof;

b) access to, and use of, domestic distribution systems;

c) the establishment of a commercial presence (other than an investment) for the purpose of distributing, marketing, delivering, or facilitating a covered service; and

d) subject to Chapter Sixteen (Investment), any investment for the provision of a covered service and any activity associated with the provision of a covered service.

Article 1402: Rights and Obligations

1. Subject to paragraph 3, each Party shall accord to persons of the other Party treatment no less favourable than that accorded in like circumstances to its persons with respect to the measures covered by this Chapter.

2. The treatment accorded by a Party under paragraph 1 shall mean, with respect to a province or a state, treatment no less favourable than the most favourable treatment accorded by such province or state in like circumstances to persons of the Party of which it forms a part.

3. Notwithstanding paragraphs 1 and 2, the treatment a Party accords to persons of the other Party may be different from the treatment the Party accords its persons provided that:

a) the difference in treatment is no greater than that necessary for prudential, fiduciary, health and safety, or consumer protection reasons;

b) such different treatment is equivalent in effect to the treatment accorded by the Party to its persons for such reasons; and

c) prior notification of the proposed treatment has been given in accordance with Article 1803.

4. The Party proposing or according different treatment under paragraph 3 shall have the burden of establishing that such treatment is consistent with that paragraph.

5. Paragraphs 1, 2, and 3 of this Article and Article 1403 shall not apply to:

a) a non-conforming provision of any existing measure;

b) the continuation or prompt renewal of a non-conforming provision of any existing measure; or

c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of paragraphs 1, 2 or 3 or of Article 1403.

6. The Party asserting that paragraph 5 applies, shall have the burden of establishing the validity of such assertion.

7. Each Party shall apply the provisions of this Chapter with respect to an enterprise owned or controlled by a person of the other Party notwithstanding the incorporation or other legal constitution of such enterprise within the Party's territory.

8. Notwithstanding that such measures may be consistent with paragraphs 1, 2 and 3 of this Article and Article 1403, neither Party shall introduce any measure, including a measure requiring the establishment or commercial presence by a person of the other Party

in its territory as a condition for the provision of a covered service, that constitutes a means of arbitrary or unjustifiable discrimination between persons of the Parties or a disguised restriction on bilateral trade in covered services.

9. No provision of this Chapter shall be construed as imposing obligations or conferring rights upon either Party with respect to government procurement or subsidies.

Article 1403: Licensing and Certification

1. The Parties recognize that measures governing the licensing and certification of nationals providing covered services should relate principally to competence or the ability to provide such covered services.

2. Each Party shall ensure that such measures shall not have the purpose or effect of discriminatorily impairing or restraining the access of nationals of the other Party to such licensing or certification.

3. The Parties shall encourage the mutual recognition of licensing and certification requirements for the provision of covered services by nationals of the other Party.

Article 1404: Sectoral Annexes

The provisions of this Chapter shall apply to the Sectoral Annexes set out in Annex 1404, except as specifically provided in the Annexes.

Article 1405: Future Implementation

1. The Parties shall endeavour to extend the obligations of this Chapter by negotiating and, subject to their respective legal procedures, implementing:

a) the modification or elimination of existing measures inconsistent with the provisions of paragraphs 1, 2 or 3 of Article 1402 and Article 1403; and

b) further Sectoral Annexes.

2. The Parties shall periodically review and consult on the provisions of this Chapter for the purpose of including additional services and for identifying further opportunities for increasing access to each other's services markets.

Article 1406: Denial of Benefits

1. Subject to prior notification and consultation in accordance with Articles 1803 and 1804, a Party may deny the benefits of this Chapter to persons of the other Party providing a covered service if the Party establishes that the covered service is indirectly provided by a person of a third country.

2. The Party denying benefits pursuant to paragraph 1 shall have the burden of establishing that such action is in accordance with that paragraph.

Article 1407: Taxation

Subject to Article 2011, this Chapter shall not apply to any new taxation measure, provided that such taxation measure does not constitute a means of arbitrary or unjustifiable discrimination between persons of the Parties or a disguised restriction on trade in covered services between the Parties.

Article 1408: Definitions

For purposes of this Chapter:

activity associated with the provision of a covered service includes the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, or other facilities for the conduct of business; the acquisition, use, protection and disposition of property of all kinds; and the borrowing of funds;

covered service means a service listed in the Schedule to Annex 1408 and described for purposes of reference in that Annex;

investment has the same meaning as in Article 1611; and

provision of a covered service into the territory of a Party includes the cross-border provision of that covered service.

Annex 1408

Services Covered by this Chapter

Services covered by this Chapter shall be limited to those services corresponding to the Standard Industrial Classification (SIC) numbers included in the Schedule to this Annex, with the addition of computer services, telecommunications-network-based enhanced services and tourism services. For purposes of reference, the services covered by this Chapter are broadly identified below.

Agriculture and forestry services

Soil preparation services
Crop planting, cultivating and protection services
Crop harvesting services (primarily by machine)
Farm management services
Landscape and horticultural services
Forestry services (such as reforestation, forest firefighting)
Crop preparation services for market
Livestock and animal specialty services (except veterinary)

Mining services

Metal mining services
Coal mining services
Oil and gas field services
Non-metallic minerals (except fuels) services

Construction services

Building, developing and general contracting services
Special trade contracting services

Distributive trade services

Wholesale trade services
Vending machine services
Direct selling services

Insurance and real estate services

Insurance services
Segregated and other funds services (managed by insurance companies only)
Insurance agency and brokering services
Subdivision and development services
Patent ownership and leasing services
Franchising services
Real estate agency and management services
Real estate leasing services

Commercial services

Commercial cleaning services
Advertising and promotional services
Credit bureau services
Collection agency services
Stenographic, reproduction and mailing services
Telephone answering services
Commercial graphic art and photography services
Services to buildings
Equipment rental and leasing services
Personnel supply services
Security and investigation services
Security systems services
Hotel reservation services
Automotive rental and leasing services
Commercial educational correspondence services
Professional services, such as
    Engineering, architectural, and surveying services
    Accounting and auditing services
    Agrology services
    Scientific and technical services
    Management consulting services
    Librarian services
    Agriculture consulting services
Non-professional accounting and book-keeping services
Training services
Commercial physical and biological research services
Commercial economic, marketing, sociological, statistical and educational research services

Public relations services
Commercial testing laboratory services
Repair and maintenance services
Other business consulting services
Management services
    Hotel and motel management services
    Health care facilities management services
    Building management services
    Retail management services
Packing and crating services

Other Services

Computer services
Telecommunications-network-based enhanced services
Tourism services

Schedule

Each Party shall apply the provisions of this Chapter to the services listed under the Party's respective section below and shall extend those provisions to all subdivisions of each division, two-digit, three-digit or four-digit industrial code listed, except as specified, and shall also extend those provisions for each Party to tourism services as specifically defined in Annex 1404 (B) and to computer services and enhanced services as specifically defined in Annex 1404 (C).

For Canada

(Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, *Standard Industrial Classification,* fourth edition, Department of Supply and Services, 1980)

02 (except 0211), 05, 09 (incidental to 06, 07, 08), 40, 41, 42, 44, 4599 - packing and crating only, 51, 52, 53, 54, 55, 56, 57, 59, 60 (except 602) - management services only, 61 - management services only, 62 - management services only, 63 - management services only, 635, 64 - management services only, 65 (except 651) - management services only, 69, 7211 - managed by insurance companies only, 7212 - managed by insurance companies only, 7213 - managed by insurance companies only, 7291 - managed by insurance companies only, 73 (except 732), 7499 - franchising, 75 - except mobile home and railroad property leasing, 76, 77 (except 776, 7794), 852 - commercial services only, 861 - management services only, 862 - management services only, 863 - management services only, 865 - management services only, 866 - management services only, 867 - management services only, 868 - commercial services only, 911 - management services only, 92, 9725, 99 (except 9931, 996, 9991).

For the United States of America

(Standard Industrial Classification (SIC) numbers as set out in the United States Office of Management and Budget, *Standard Industrial Classification Manual, 1987*)

071, 0721, 0722, 0723, 075, 0762, 078, 085, 108, 124, 138, 148, 15, 16, 17, 4783, 50, 51, 52 - management services only, 53 - management services only, 54 - management services only, 55 - management services only, 56 - management services only, 57 - management services only, 58 - management services only, 59 - management services only, 596, 63 (except 639), 64, 6512, 6513, 6514, 6519, 653, 6552, 6794 - franchising, 701 - management services only, 7213, 7218, 731, 732, 733, 734, 735, 736, 7381, 7382, 7389 - hotel reservation services and telephone answering services only, 751, 753, 76 - repair and maintenance services only, 80 (except 807) - management services only, 807 - commercial services only, 824 - commercial services only, 871, 872, 8731, 8732, 8734, 8741, 8742, 8743, 8748.

Annex 1404

Sectoral Annexes

A. Architecture

Article 1: Scope and Coverage

This Sectoral Annex shall apply to any measure relating to the mutual recognition of professional standards and criteria for the licensing and conduct of architects and the provision of architectural services.

Article 2: Development of Mutually Acceptable Professional Standards and Criteria

The Parties acknowledge that the Royal Architectural Institute of Canada and the American Institute of Architects, in consultation with appropriate professional and regulatory bodies, are endeavouring to develop mutually acceptable professional standards and criteria regarding the following matters for the purpose of making recommendations on mutual recognition, on or before December 31, 1989:

a) education -- accreditation of schools of architecture;

b) examination -- qualifying examinations for licensing;

c) experience -- determination of experience required in order to be licensed to practise;

d) conduct and ethics -- specification of professional conduct required of practising architects and the disciplinary action for non-conformity; and

e) professional development -- continuing education of practising architects.

Article 3: Implementation

Upon receipt of the recommendations of the professional associations, the Parties shall:

a) complete their review of the recommendations within 180 days following receipt; and

b) if such recommendations are consistent with this Chapter and acceptable to the Parties, encourage their respective state and provincial governments to adopt or amend, within the six-month period following completion of the review, those measures necessary so that:

   i) the respective state and provincial licensing authorities accept the licensing and certification requirements of the other Party on the same basis as their own; and

   ii) the treatment accorded persons of a Party providing architectural services within or into the territory of the other Party is consistent with paragraphs 1, 2, and 3 of Article 1402.

Article 4: Review

The Parties shall establish a committee for the purpose of reviewing compliance by the licensing authorities with the standards and criteria implemented pursuant to Article 3 of this Sectoral Annex.

B. Tourism

Article 1: Scope and Coverage

1. This Sectoral Annex shall apply to any measure related to trade in tourism services.

2. For purposes of this Sectoral Annex:

tourism services include the tourism-related activities of the following: travel agency and related travel services including tour wholesaling, travel counselling, arranging and booking; issuance of travellers insurance; all modes of international passenger transportation; hotel reservation services; terminal services for all modes of transport, including concessions; transportation catering services; airport transfer; lodging, including hotels, motels, and rooming houses; local sightseeing, regardless of mode of transportation; intercity tour operation; guide and interpreter services; automobile rental; provision of resort facilities; rental of recreational equipment; food services; retail services; organizational and support services for international conventions; marina-related services including the fueling, supply, and repair of, and provision of docking space to, pleasure boats; recreational vehicle rental; campground and trailer park services; amusement park services; commercial tourist attractions; and tourism-related services of a financial nature;

tourism-related services of a financial nature means such services provided by an entity that is not a financial institution as defined in Article 1706; and

trade in tourism services means the provision of a tourism service by a person of a Party

a) within the territory of that Party to a visitor who is a resident of the other Party, or

b) within the territory of the other Party to a resident of, or visitor to, the other Party, either cross-border, through a commercial presence or through an establishment in the territory of the other Party.

Article 2: Obligations

1. This Chapter shall apply to all measures related to trade in tourism services, which measures include:

a) provision of tourism services in the territory of a Party, either individually or with members of a travel industry trade association;

b) appointment, maintenance and commission of agents or representatives in the territory of a Party to provide tourism services;

c) establishment of sales offices or designated franchises in the territory of a Party; and

d) access to basic telecommunications transport networks.

2. Provided that such promotional activities do not include the provision of tourism services for profit, each Party may promote officially in the territory of the other Party the travel and tourism opportunities in its own territory, including engagement in joint promotions with tourism enterprises of that Party and provincial, state and local governments.

3. The Parties recognize that the adoption or application of fees or other charges on the departure or arrival of tourists from their territories impedes the free flow of tourism services. When such fees or other charges are imposed, they shall be applied in a manner consistent with Article 1402 and limited in amount to the approximate cost of the services rendered.

4. Neither Party shall impose, except in conformity with Article VIII of the *Articles of Agreement of the International Monetary Fund*, restrictions on the value of tourism services that its residents or visitors to its territory may purchase from persons of the other Party.

Article 3: Relationship to the Agreement

Nothing in this Sectoral Annex shall be construed as:

a) conferring rights or imposing obligations on a Party relating to computer services and enhanced services as defined in Annex

1404(C), financial services as defined in Article 1706 and transportation services that are not otherwise conferred or imposed pursuant to any other provision of this Agreement and its annexes; or

b) affecting in any way the application of measures relating to the provision of tourism-related services of a financial nature.

Article 4: Consultation

The Parties shall consult at least once a year to:

a) identify and seek to eliminate impediments to trade in tourism services; and

b) identify ways to facilitate and increase tourism between the Parties.

C. Computer Services and Telecommunications-Network-Based Enhanced Services

Article 1: Objective

The objective of this Sectoral Annex is to maintain and support the further development of an open and competitive market for the provision of enhanced services and computer services within or into the territories of the Parties. The provisions of this Sectoral Annex shall be construed in accordance with this objective.

Article 2: Scope and Coverage

This Sectoral Annex shall apply to any measure of a Party related to the provision of an enhanced or computer service by or on behalf of a person of the other Party within or into the territory of the Party.

Article 3: Rights and Obligations

1. This Chapter shall apply to all measures covered by this Sectoral Annex, which includes measures related to:

a) access to, and use of, basic telecommunications transport services, including, but not limited to, the lease of local and long-distance telephone service, full-period, flat-rate private-line services, dedicated local and intercity voice channels, public data network services, and dedicated local and intercity digital and analog data services for the movement of information, including intracorporate communications;

b) the resale and shared use of such basic telecommunications transport services;

c) the purchase and lease of customer-premises equipment or terminal equipment and the attachment of such equipment to basic telecommunications transport networks;

d) regulatory definitions of, or classifications as between, basic telecommunications transport services and enhanced services or computer services;

e) subject to Chapter Six (Technical Standards), standards, certification, testing or approval procedures; and

f) the movement of information across the borders and access to data bases or related information stored, processed or otherwise held within the territory of a Party.

2. The establishment of a commercial presence as set out in this Chapter shall include the establishment of offices, appointment of agents, and installation of customer-premises equipment or terminal equipment for the purpose of distributing, marketing, delivering or facilitating the provision of an enhanced or computer service within or into the territory of a Party.

3. Investment as set out in this Chapter shall include the purchase, lease, construction, or operation of equipment necessary for the provision of an enhanced or computer service.

Article 4: Existing Access

1. Each Party shall maintain existing access, within and across the borders of both Parties, for the provision of enhanced services through the use of the basic telecommunications transport network of the Party and for the provision of computer services.

2. Nothing in paragraph 1 shall be construed to restrict or prevent a Party from introducing measures related to the provision of enhanced services and computer services provided that such measures are consistent with this Chapter.

Article 5: Monopolies

1. Where a Party maintains or designates a monopoly to provide basic telecommunications transport facilities or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced services, the Party shall ensure that the monopoly shall not engage in anticompetitive conduct in the enhanced services market, either directly or through its dealings with its affiliates, that adversely affects a person of the other Party. Such conduct may include cross-subsidization, predatory conduct, and the discriminatory provision of access to basic telecommunications transport facilities or services.

2. Each Party shall maintain or introduce effective measures to prevent the anticompetitive conduct referred to in paragraph 1. These measures may include accounting requirements, structural separation, and disclosure.

Article 6: Exceptions

1. Nothing in this Agreement shall be construed:

a) to require a Party to authorize a person of the other Party

  i) to establish, construct, acquire, lease or operate basic telecommunications transport facilities; or

  ii) to offer basic telecommunications transport services within its territory;

b) to prevent a Party from maintaining, authorizing or designating monopolies for the provision of basic telecommunications transport facilities or services; or

c) to prevent a Party from maintaining or introducing measures requiring basic telecommunications transport service traffic to be carried on basic telecommunications transport networks within its territory, where such traffic

  i) originates and terminates within its territory,

  ii) originates within its territory and is destined for the territory of the other Party or a third country, or

  iii) terminates in its territory, having originated in the territory of the other Party or a third country.

2. The inclusion of intracorporate communications in this Sectoral Annex shall not be construed to indicate whether or not such communications are traded internationally. Their inclusion is to indicate that they may serve to facilitate trade in goods and services.

Article 7: Definitions

For purposes of this Sectoral Annex:

basic telecommunications transport service means any service, as defined and classified by measures of the regulator having jurisdiction, that is limited to the offering of transmission capacity for the movement of information;

computer services means those services, whether or not conveyed over the basic telecommunications transport network, that involve generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information in a computerized form, including, but not limited to:

computer programming,
prepackaged software,
computer integrated systems design,
computer processing and data preparation,
information retrieval services,
computer facilities management,
computer leasing and rental,
computer maintenance and repair, and
other computer-related services, including those integral to the provision of other covered services;

enhanced service means any service offering over the basic telecommunications transport network that is more than a basic telecommunications transport service as defined and classified by measures of the regulator having jurisdiction; and

monopoly means any entity, including any consortium, that, in any relevant market in the territory of a Party, is the sole provider of basic telecommunications transport facilities or services.

Chapter Fifteen: Temporary Entry for Business Persons

In this Chapter, the two Parties establish a unique set of obligations to deal with an increasingly vexing problem in international trade. Export sales today require more than a good product at a good price. They also require a good sales network and, most of all, reliable after-sales service. Free and open trade conditions, therefore, require not only that goods, services and investments be treated without discrimination, but that the people required to make sales and manage investments or provide before and after service of those sales and investments should be able to move freely across the border. Furthermore, trade in professional and commercial services cannot take place unless people can move freely across the border. The challenge, therefore, was to ensure that immigration regulations would complement the rules governing the movement of goods, services and investments, but would not compromise the ability of either government to determine who may gain entry.

The government's objectives in this area were informed by the increasing frustration experienced by Canadian entrepreneurs in making and servicing sales to their U.S. customers. Many were experiencing delays and even outright denial of entry for what most considered normal business travel. Some resorted to setting up U.S. subsidiaries, dealing through third parties, or conducting their business electronically. The result was lost sales, higher costs, lower efficiency and foreclosed opportunities. In the absence of eased restrictions on border crossings, such frustrations were likely to increase as barriers to trade in goods and services and investment are reduced and eliminated as a result of other chapters of the Agreement.

To solve this problem, the two governments adapted immigration regulations to facilitate business travel. In Chapter Fifteen, the two governments take the necessary steps to ensure that business persons and enterprises will have the necessary access to each other's market in order to sell their goods and services and supply after sales service to their customers.

The agreed rules are based on reciprocal access for Canadian and American business travellers to the other market. National laws and regulations governing their entry will be liberalized and entry procedures will be quick and simple. In order to limit the application of this general rule to genuine business travellers, the two *governments have divided business travel into four categories and covered seven specific types of activities. These are set out in detail in the annexes to the chapter.*

In order to gain temporary entry under the terms of the Agreement to the United States, therefore, Canadian business travellers must qualify for entry generally (i.e., meet normal health and safety requirements) and indicate the nature of their business (i.e., whether entering as a Business Visitor, as a Professional, as a Trader or Investor, or as an Intra-Company Transferee);

In addition, a Professional must be on the list of professions set out in Schedule 2 of the Annex . A Business Visitor must also state the specific purpose of the visit and seven general types of activities are set out in Schedule 1 of the Annex:

- *Research and Design*
- *Growth, Manufacture and Production*
- *Marketing*
- *Sales*
- *Distribution*
- *After Sales Service*
- *General Services*

For other categories of business travellers, current restrictions, such as the need to gain prior approval or to meet a labour certification test, would no longer apply to Canadians.

As they gain experience with the agreement as a whole and with the specific provisions of this chapter, the two governments will consider ways to improve the coverage and operation of these new procedures. The dispute settlement provisions of the agreement can be invoked if there is a clear pattern of discrimination in the administration of the entry procedures.

Chapter Fifteen

Temporary Entry for Business Persons

Article 1501: General Principle

The provisions of this Chapter reflect the special trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and protect indigenous labour and permanent employment.

Article 1502: Obligations

1. The Parties shall provide, in accordance with Annex 1502.1, for the temporary entry of business persons who are otherwise qualified for entry under applicable law relating to public health and safety and national security.

2. Each Party shall publish its laws, regulations and procedures relating to the provisions of this Chapter and provide to the other Party such explanatory materials as may be reasonably necessary to enable the other Party and its business persons to become acquainted with them.

3. Any fees for processing applications for temporary entry of business persons shall be limited in amount to the approximate cost of services related thereto.

4. Data collected and maintained by a Party respecting the granting of temporary entry to business persons under this Chapter shall be made available to the other Party in conformity with applicable law.

5. The application and enforcement of measures governing the granting of temporary entry to business persons shall be accomplished expeditiously so as to avoid unduly impairing or delaying the conduct of trade in goods or services, or of investment activities, under this Agreement.

Article 1503: Consultation

The Parties shall establish a procedure, which shall involve the participation of immigration officials of both Parties, for consultation at least once a year respecting:

a) the implementation of this Chapter; and

b) the development of measures for the purpose of further facilitating temporary entry of business persons on a reciprocal basis and the development of amendments and additions to Annex 1502.1.

Article 1504: Dispute Settlement

1. Subject to paragraph 2, a Party may invoke the provisions of Chapter Eighteen with respect to any matter governed by this Chapter.

2. A Party may not invoke the provisions of Articles 1806 or 1807 of this Agreement with respect to the denial of a business person's request for temporary entry or a matter under paragraph 5 of Article 1502 unless:

a) the matter involves a pattern of practice; and

b) available administrative remedies have been exhausted with respect to the particular matter involving a business person's request for temporary entry, provided that such remedies shall be deemed to be exhausted if a final decision in the matter has not been issued within one year of the institution of administrative proceedings and the failure to issue a decision is not attributable to delay caused by the business person.

Article 1505: Relationship to other Chapters

No provision of any other Chapter of this Agreement shall be construed as imposing obligations upon the Parties with respect to the Parties' immigration measures.

Article 1506: Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in the trade of goods or services or in investment activities; and

temporary entry means entry without the intent to establish permanent residence.

Annex 1502.1
Temporary Entry for Business Persons

United States of America

A. Business Visitors

1. A business person seeking temporary entry into the United States of America for purposes set forth in Schedule 1, who otherwise meets existing requirements under section 101(a)(15)(B) of the *Immigration and Nationality Act,* including but not limited to requirements regarding the source of remuneration, shall be granted entry upon presentation of proof of Canadian citizenship and documentation demonstrating that the business person is engaged in one of the occupations or professions set forth in Schedule 1 and describing the purpose of entry.

2. A business person engaged in an occupation or profession other than those listed in Schedule 1 shall be granted temporary entry under section 101(a)(15)(B) of the *Immigration and Nationality Act* if the business person meets existing requirements for entry.

3. The United States of America shall not require, as a condition for temporary entry under paragraphs 1 or 2, prior approval procedures, petitions, labour certification tests, or other procedures of similar effect.

B. Traders and Investors

4. A business person seeking temporary entry into the United States of America to carry on substantial trade in goods or services, in a capacity that is supervisory or executive or involves essential skills, principally between the United States of America and Canada, or solely to develop and direct the operations of an enterprise in which the business person has invested, or is actively in the process of investing, a substantial amount of capital, shall be granted entry under section 101(a)(15)(E) of the *Immigration and Nationality Act,* and be provided confirming documentation, if the business person meets existing requirements for visa issuance and for entry.

5. The United States of America shall not require, as a condition for temporary entry under paragraph 4, labour certification tests or other procedures of similar effect.

C. Professionals

6. A business person seeking temporary entry into the United States of America to engage in business activities at a professional level who meets existing requirements under section 214(e) of the *Immigration and Nationality Act* shall be granted entry, and be provided confirming documentation, upon presentation of proof of Canadian citizenship and documentation demonstrating that the business person is engaged in one of the professions set forth in Schedule 2 and describing the purpose of entry.

7. The United States of America shall not require, as a condition for temporary entry under paragraph 6, prior approval procedures, petitions, labour certification tests, or other procedures of similar effect.

D. Intra-Company Transferees

8. A business person seeking temporary entry into the United States of America as an intra-company transferee shall be granted entry under section 101(a)(15)(L) of the *Immigration and Nationality Act*, and be provided confirming documentation, if the business person:

a) immediately preceding the time of application for admission has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof;

b) is seeking temporary entry in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge; and

c) meets existing requirements for entry.

9. The United States of America shall not require, as a condition for temporary entry under paragraph 8, labour certification tests or other procedures of similar effect.

Canada

A. Business Visitors

1. A business person seeking temporary entry into Canada for purposes set forth in Schedule 1, who otherwise meets existing requirements under the *Immigration Act, 1976,* shall be granted entry without being required to obtain an employment authorization pursuant to subsection 19(1) of the Immigration Regulations, 1978, upon presentation of proof of United States citizenship and documentation demonstrating that the business person is engaged in one of the occupations or professions set forth in Schedule 1 and describing the purpose of entry.

2. A business person engaged in an occupation or profession other than those listed in Schedule 1 shall be granted temporary entry under the *Immigration Act, 1976,* without being required to obtain an employment authorization pursuant to subsection 19(1) of the Immigration Regulations, 1978, if the business person meets existing requirements for entry.

3. Canada shall not require, as a condition for temporary entry under paragraphs 1 or 2, prior approval procedures, petitions, labour certification tests, or other procedures of similar effect.

B. Traders and Investors

4. A business person seeking temporary entry into Canada to carry on substantial trade in goods or services, in a capacity that is supervisory or executive or involves essential skills, principally between Canada and the United States of America, or solely to develop and direct the operations of an enterprise in which the business person has invested, or is actively in the process of investing, a substantial amount of capital, shall be granted entry under the *Immigration Act, 1976,* and shall be issued an employment authorization pursuant to subsection 20(5) of the Immigration Regulations, 1978, if the business person meets existing requirements for entry.

5. Canada shall not require, as a condition for temporary entry under paragraph 4, labour certification tests or other procedures of similar effect.

C. Professionals

6. A business person seeking temporary entry into Canada to engage in business activities at a professional level who meets existing requirements for entry under the *Immigration Act, 1976,* shall be granted entry and shall be issued an employment authorization pursuant to subsection 20(5) of the Immigration Regulations, 1978, upon presentation of proof of United States citizenship and documentation demonstrating that the business person is engaged in one of the professions set forth in Schedule 2 and describing the purpose of entry.

7. Canada shall not require, as a condition for temporary entry under paragraph 6, prior approval procedures, petitions, labour certification tests, or other procedures of similar effect.

D. Intra-Company Transferees

8. A business person seeking temporary entry into Canada as an intra-company transferee shall be granted entry under the *Immigration Act, 1976,* and shall be issued an employment authorization pursuant to subsection 20(5) of the Immigration Regulations, 1978, if the business person:

a) immediately preceding the time of application for admission has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof;

b) is seeking temporary entry in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge; and

c) meets existing requirements for entry.

9. Canada shall not require, as a condition for temporary entry under paragraph 8, labour certification tests or other procedures of similar effect.

Schedule 1[1]
to
Annex 1502.1

Research and Design

- technical, scientific, and statistical researchers conducting independent research, or research for an enterprise located in Canada/the United States.

Growth, Manufacture and Production

- harvester owner supervising a harvesting crew admitted under applicable law.

- purchasing and production management personnel conducting commercial transactions for an enterprise located in Canada/the United States.

Marketing

- market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in Canada/ the United States.

- trade fair and promotional personnel attending a trade convention.

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[1] Where Schedule 1 refers to "Canada/the United States" the applicable reference is to:

a) Canada, if the business person is seeking temporary entry into the United States of America; or
b) the United States of America, if the business person is seeking temporary entry into Canada.

Where Schedule 1 refers to "the United States/ Canada" the applicable reference is to:

a) the United States of America, if the business person is seeking temporary entry into the United States of America; or
b) Canada, if the business person is seeking temporary entry into Canada.

Sales

- sales representatives and agents taking orders or negotiating contracts for goods or services but not delivering goods or providing services.

- buyers purchasing for an enterprise located in Canada/ the United States.

Distribution

- transportation operators delivering to the United States/Canada or loading and transporting back to Canada/ the United States, with no intermediate loading or delivery within the United States/Canada.

- customs brokers performing brokerage duties associated with the export of goods from the United States/ Canada to or through Canada/ the United States.

After-Sales Service

- installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States/Canada, during the life of the warranty or service agreement.

General Service

- professionals: with respect to entry into the United States of America, otherwise classifiable under section 101(a)(15)(H)(i) of the *Immigration and Nationality Act*, but receiving no salary or other remuneration from a United States source; and, with respect to entry into Canada, exempt from the requirement to obtain an employment authorization pursuant to subsection 19(1) of the Immigration Regulations, 1978, but receiving no salary or other remuneration from a Canadian source.

- management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada/the United States.

- computer specialists: with respect to entry into the United States of America, otherwise classifiable under section 101(a)(15)(H)(i) of the *Immigration and Nationality Act,* but receiving no salary or other remuneration from a United States source; and, with respect to entry into Canada, exempt from the requirement to obtain an employment authorization pursuant to subsection 19(1) of the Immigration Regulations, 1978, but receiving no salary or other remuneration from a Canadian source.

- financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in Canada/ the United States.

- public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

- tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in Canada/ the United States.

- translators or interpreters performing services as employees of an enterprise located in Canada/ the United States.

Schedule 2 to Annex 1502.1

- accountant
- engineer
- scientist
    - biologist
    - biochemist
    - physicist
    - geneticist
    - zoologist
    - entomologist
    - geophysicist
    - epidemiologist
    - pharmacologist
    - animal scientist
    - agriculturist (agronomist)
    - dairy scientist
    - poultry scientist
    - soil scientist
- research assistant (working in a post-secondary educational institution)
- medical/allied professional
    - physician (teaching and/or research only)
    - dentist
    - registered nurse
    - veterinarian
    - medical technologist
    - clinical lab technologist
- architect
- lawyer
- teacher
    - college
    - university
    - seminary
- economist
- social worker
- vocational counselor
- mathematician (baccalaureate)
- hotel manager (baccalaureate and 3 years experience)
- librarian (MLS)
- animal breeder
- plant breeder
- horticulturist
- sylviculturist (forestry specialist)
- range manager (range conservationist)
- forester
- journalist (baccalaureate and 3 years experience)
- nutritionist
- dietitian
- technical publications writer
- computer systems analyst

- psychologist
- management consultant (baccalaureate, or equivalent professional experience[1])
- scientific technician/technologist [2]
- disaster relief insurance claims adjuster [3]

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[1] Standards for equivalence to be developed prior to entry into force of this Agreement.

[2] Must

a) work in direct support of professionals in the following disciplines: chemistry, geology, geophysics, meteorology, physics, astronomy, agricultural sciences, biology, or forestry;
b) possess theoretical knowledge of the discipline;
c) solve practical problems in the discipline; and
d) apply principles of the discipline to basic or applied research.

[3] Standards for qualification to be developed prior to entry into force of this Agreement.

Chapter Sixteen: Investment

A hospitable and secure investment climate is indispensable if the two countries are to achieve the full benefits of reducing barriers to trade in goods and services. Chapter Sixteen establishes a mutually beneficial framework of principles sensitive to the national interests of both countries with the objective that investment flow more freely between Canada and the United States and that investors be treated in a fair and predictable manner.

The basic obligation is to ensure that future regulation of Canadian investors in the United States and of American investors in Canada results in treatment no different than that extended to domestic investors within each country. This basic principle is qualified on the basis of existing practice and is translated into the following specific undertakings:

- *Article 1602: national treatment on the establishment of new businesses. Canadian investors in the United States and U.S. investors in Canada will be subject to the same rules as domestic investors when it comes to establishing a new business.*

- *Article 1602 and Article 1607: more liberal rules on the acquisition of existing businesses. Canada retains the right to review the acquisition of firms in Canada by U.S. investors, but has agreed to phase in higher threshold levels for direct acquisitions. Article 1607 provides that the review threshold for direct acquisitions will be raised in four steps to $150 million by 1992. At that time, about three-quarters of total non-financial assets in Canada now reviewable will still be reviewable. For indirect acquisitions, which involve the transfer of control of one foreign-controlled firm to another, the review process will be phased out over the same period. These changes to the Investment Canada review process will not apply to the oil and gas and uranium sectors.*

- *Article 1602: national treatment once established, i.e., the conduct, operation and sale of U.S.-owned firms in Canada or Canadian-owned firms in the United States will be subject to the same rules as firms owned by domestic investors. Both governments are completely free to regulate the ongoing operation of business enterprises in their respective juris-*

dictions under, for example, competition law, provided that they do not discriminate.

- *Article 1603: limits on certain performance requirements. Both countries have agreed to prohibit investment-related performance requirements (such as local content and import substitution requirements) which significantly distort bilateral trade flows. The negotiation of product mandate, research and development, and technology transfer requirements with investors, however, will not be precluded. Moreover, this Article does not preclude the negotiation of performance requirements attached to subsidies or government procurement.*

- *Article 1605: due process on expropriation. If either government chooses to nationalize an industry to achieve some public policy goal, it is obligated to acquire foreign-controlled firms on the basis of due process and based on the payment of fair and adequate compensation.*

- *Article 1606: no restrictions on the patriation of profits or the proceeds of a sale other than those necessary to implement domestic laws of general application, such as bankruptcy laws, the regulation of securities or balance-of-payment measures.*

These undertakings are prospective (i.e., applied to future changes in laws and regulations only). Existing laws, policies and practices are grandfathered, except where specific changes are required (Article 1607). The practical effect of these obligations, therefore, is to exempt the oil and gas and uranium sectors from changes to the Investment Canada Act (Annex 1607.3) and to freeze the various exceptions to national treatment provided in Canadian and U.S. law (such as the restrictions on foreign ownership in the communications and transportation industries). Additionally, both governments remain free to tax foreign-owned firms on a different basis than domestic firms provided this does not result in arbitrary or unjustifiable discrimination (Article 1609) and to exempt the sale of Crown-owned firms from any national treatment obligations (Article 1602). Finally, the two governments retain some flexibility in the application of the national treatment obligations (Article 1602). They need not extend identical treatment as long as the treatment is equivalent (Article 1602).

The definitions are critical to understanding the operation of this chapter. While they are complicated, they make it clear to investors exactly who benefits or is affected by the operational articles.

To make the Chapter work, the two governments have agreed to allow monitoring of foreign investment and to resolve any disputes under the dispute settlement provisions of the Agreement, with the exception that any review decisions by Investment Canada will not be subject to dispute settlement. They have also agreed to work together in the Uruguay Round of Multilateral Trade Negotiations on trade-related investment rules.

The freer flow of investment across the border will allow for the creation of new jobs and wealth in both Canada and the United States. The hospitable investment environment in Canada enhanced through the investment provisions, as well as by the operation of the Agreement as a whole, will ensure that adjustment and economic growth proceed in an efficient manner but one which is sensitive to the needs of individuals, regions and sectors.

Chapter Sixteen

Investment

Article 1601: Scope and Coverage

1. Subject to paragraphs 2 and 3, this Chapter shall apply to any measure of a Party affecting investment within or into its territory by an investor of the other Party.

2. This Chapter shall not apply to any measure affecting investments related to:

a) the provision of financial services unless such measure relates to the provision of insurance services and is not dealt with under paragraph 1 of Article 1703;

b) government procurement; or

c) the provision of transportation services.

3. The provisions of subparagraph 1(c) of Article 1602 shall not apply to any measure affecting investments related to the provision of services other than covered services.

Article 1602: National Treatment

1. Except as otherwise provided in this Chapter, each Party shall accord to investors of the other Party treatment no less favourable than that accorded in like circumstances to its investors with respect to its measures affecting:

a) the establishment of new business enterprises located in its territory;

b) the acquisition of business enterprises located in its territory;

c) the conduct and operation of business enterprises located in its territory; and

d) the sale of business enterprises located in its territory.

2. Neither Party shall impose on an investor of the other Party a requirement that a minimum level of equity (other than nominal qualifying shares for directors or incorporators of corporations) be held by its nationals in a business enterprise located in its territory controlled by such investor.

3. Neither Party shall require an investor of the other Party by reason of its nationality to sell or otherwise dispose of an investment (or any part thereof) made in its territory.

4. The treatment accorded by a Party under paragraph 1 shall mean, with respect to a province or a state, treatment no less favourable than the most favourable treatment accorded by such province or state in like circumstances to investors of the Party of which it forms a part.

5. Canada may introduce any new measure in respect of any business enterprise that is carried on at the date of entry into force of this Agreement by or on behalf of Canada or a province or a Crown corporation that:

a) is inconsistent with the provisions of paragraphs 1 or 2 and relates to the acquisition or sale of such business enterprise; or

b) relates to the direct or indirect ownership at any time of such business enterprise.

6. Once Canada has introduced a new measure pursuant to paragraph 5, it shall not:

a) in the case of a new measure introduced pursuant to subparagraph 5(a), amend such new measure or introduce any subsequent measure that, as the case may be, renders such new measure more inconsistent with, or is more inconsistent with, the provisions of paragraphs 1 or 2; or

b) in the case of a new measure introduced pursuant to subparagraph 5(b), increase any ownership restrictions contained in such new measure.

7. If, subsequent to the date of entry into force of this Agreement, a business enterprise is established or acquired by or on behalf of Canada or a province or a Crown corporation, the provisions of

paragraphs 1 and 2 shall not apply to the subsequent acquisition of such business enterprise as a result of its disposition by or on behalf of Canada or a province or a Crown corporation. Once such subsequent acquisition has been completed, the provisions of paragraphs 1 and 2 shall apply.

8. Notwithstanding paragraph 1, the treatment a Party accords to investors of the other Party may be different from the treatment the Party accords its investors provided that:

a) the difference in treatment is no greater than that necessary for prudential, fiduciary, health and safety, or consumer protection reasons;

b) such different treatment is equivalent in effect to the treatment accorded by the Party to its investors for such reasons; and

c) prior notification of the proposed treatment has been given in accordance with Article 1803.

9. The Party proposing or according different treatment under paragraph 8 shall have the burden of establishing that such treatment is consistent with that paragraph.

Article 1603: Performance Requirements

1. Neither Party shall impose on an investor of the other Party, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a requirement to:

a) export a given level or percentage of goods or services;

b) substitute goods or services from the territory of such Party for imported goods or services;

c) purchase goods or services used by the investor in the territory of such Party or from suppliers located in such territory or accord a preference to goods or services produced in such territory; or

d) achieve a given level or percentage of domestic content.

2. Neither Party shall impose on an investor of a third country, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a commitment to meet any of the requirements described in paragraph 1 where meeting such a requirement could have a significant impact on trade between the two Parties.

3. For purposes of paragraphs 1 and 2 and paragraph 2 of Article 1602, a Party "imposes" a requirement or commitment on an investor when it requires particular action of an investor or when, after the date of entry into force of this Agreement, it enforces any undertaking or commitment of the type described in paragraphs 1 and 2 or in paragraph 2 of Article 1602 given to that Party after that date.

Article 1604: Monitoring

1. Each Party may require an investor of the other Party who makes or has made an investment in its territory to submit to it routine information respecting such investment solely for informational and statistical purposes. The Party shall protect such business information that is confidential from disclosure that would prejudice the investor's competitive position.

2. Nothing in paragraph 1 shall preclude a Party from otherwise obtaining or disclosing information in connection with the non-discriminatory and good faith application of its laws.

Article 1605: Expropriation

Neither Party shall directly or indirectly nationalize or expropriate an investment in its territory by an investor of the other Party or take any measure or series of measures tantamount to an expropriation of such an investment, except:

a) for a public purpose;

b) in accordance with due process of law;

c) on a non-discriminatory basis; and

d) upon payment of prompt, adequate and effective compensation at fair market value.

Article 1606: Transfers

1. Subject to paragraph 2, neither Party shall prevent an investor of the other Party from transferring:

   a) any profits from an investment, including dividends;

   b) any royalties, fees, interest and other earnings from an investment; or

   c) any proceeds from the sale of all or any part of an investment or from the partial or complete liquidation of such investment.

2. A Party may, through the equitable, non-discriminatory and good faith application of its laws, prevent any transfer referred to in paragraph 1 if such transfer is inconsistent with any measure of general application relating to:

   a) bankruptcy, insolvency or the protection of the rights of creditors;

   b) issuing, trading or dealing in securities;

   c) criminal or penal offences;

   d) reports of currency transfers;

   e) withholding taxes; or

   f) ensuring the satisfaction of judgments in adjudicatory proceedings.

Article 1607: Existing Legislation

1. The provisions of Articles 1602, 1603, 1604, 1605 and 1606 of this Chapter shall not apply to:

   a) a non-conforming provision of any existing measure;

   b) the continuation or prompt renewal of a non-conforming provision of any existing measure; or

c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of Articles 1602, 1603. 1604, 1605 or 1606.

2. The Party asserting that paragraph 1 applies shall have the burden of establishing the validity of such assertion.

3. The *Investment Canada Act,* its regulations and guidelines shall be amended as provided for in Annex 1607.3.

4. In the event that Canada requires the divestiture of a business enterprise located in Canada in a cultural industry pursuant to its review of an indirect acquisition of such business enterprise by an investor of the United States of America, Canada shall offer to purchase the business enterprise from the investor of the United States of America at fair open market value, as determined by an independent, impartial assessment.

Article 1608: Disputes

1. A decision by Canada following a review under the *Investment Canada Act,* with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of this Agreement.

2. Each Party and investors of each Party retain their respective rights and obligations under customary international law with respect to portfolio and direct investment not covered under this Chapter or to which the provisions of this Chapter do not apply.

3. Nothing in this Chapter shall affect the rights and obligations of either Party under the *General Agreement on Tariffs and Trade* or under any other international agreement to which both are party.

4. In view of the special nature of investment disputes and the expertise required to resolve them, where the procedures of Chapter Eighteen (Institutional Provisions) are invoked, the Parties and the Commission shall give the fullest consideration, in any particular case, to settling any dispute regarding the interpretation or application of this Chapter by arbitration or panel procedures pursuant to Articles 1806 or 1807, and shall make every attempt to ensure that the panelists are individuals experienced and competent in the field of international

investment. When deciding a dispute pursuant to Articles 1806 or 1807, the panel shall take into consideration how such disputes before it are normally dealt with by internationally recognized rules for commercial arbitration.

Article 1609: Taxation and Subsidies

1. Subject to Article 2011, this Chapter shall not apply to any new taxation measure, provided that such measure does not constitute a means of arbitrary or unjustifiable discrimination between investors of the Parties or a disguised restriction on the benefits accorded to investors of the Parties under this Chapter.

2. Subject to Article 2011, this Chapter shall not apply to any subsidy, provided that such subsidy does not constitute a means of arbitrary or unjustifiable discrimination between investors of the Parties or a disguised restriction on the benefits accorded to investors of the Parties under this Chapter.

Article 1610: International Agreements

The Parties shall endeavour, in the Uruguay Round and in other international forums, to improve multilateral arrangements and agreements with respect to investment.

Article 1611: Definitions

For purposes of this Chapter, not including Annex 1607.3:

acquisition with respect to:

a) a business enterprise carried on by an entity, means an acquisition, as a result of one or more transactions, of the ultimate direct or indirect control of the entity through the acquisition of the ownership of voting interests; or
b) any business enterprise, means an acquisition, as a result of one or more transactions, of the ownership of all or substantially all of the assets of the business enterprise used in carrying on the business.

business enterprise means a business that has, or in the case of an establishment thereof will have:

a) a place of business;
b) an individual or individuals employed or self-employed in connection with the business; and
c) assets used in carrying on the business.

NOTE: A part of a business enterprise that is capable of being carried on as a separate business enterprise is itself a business enterprise.

control or controlled, with respect to:

a) a business enterprise carried on by an entity, means
    i) the ownership of all or substantially all of the assets used in carrying on the business enterprise; and
    ii) includes, with respect to an entity that controls a business enterprise in the manner described in subparagraph (i), the ultimate direct or indirect control of such entity through the ownership of voting interests; and
b) a business enterprise other than a business enterprise carried on by an entity, means the ownership of all or substantially all of the assets used in carrying on the business enterprise.

Crown corporation means a Crown corporation within the meaning of the *Financial Administration Act (Canada)* or a Crown corporation within the meaning of any comparable provincial legislation or that is incorporated under other applicable provincial legislation.

cultural industry has the same meaning as in Article 2012.

entity means a corporation, partnership, trust or joint venture.

establishment means a start-up of a new business enterprise and the activities related thereto.

indirect acquisition has the same meaning as in Annex 1607. 3.

investment means:

a) the establishment of a new business enterprise, or
b) the acquisition of a business enterprise;

and includes:

c) as carried on, the new business enterprise so established or the business enterprise so acquired, and controlled by the investor who has made the investment; and

d) the share or other investment interest in such business enterprise owned by the investor provided that such business enterprise continues to be controlled by such investor.

investor of a Party means:

a) such Party or agency thereof;
b) a province or state of such Party or agency thereof;
c) a national of such Party;
d) an entity ultimately controlled directly or indirectly through the ownership of voting interests by:
  i) such Party or one or more agencies thereof,
  ii) one or more provinces or states of such Party or one or more agencies thereof,
  iii) one or more nationals of such Party,
  iv) one or more entities described in paragraph (e), or
  v) any combination of persons or entities described in (i), (ii), (iii) and (iv); or
e) an entity that is not ultimately controlled directly or indirectly through the ownership of voting interests where a majority of the voting interests of such entity are owned by:
  i) persons described in subparagraphs (d) (i), (ii) and (iii),
  ii) entities incorporated or otherwise duly constituted in the territory of such Party and, in the case of entities that carry on business, carrying on a business enterprise located in the territory of such Party, other than any such entity in respect of which it is established that nationals of a third country control such entity or own a majority of the voting interests of such entity, or
  iii) any combination of persons or entities described in (i) and (ii);

that makes or has made an investment.

NOTE: For purposes of paragraph (e), in respect of individuals each of whom holds not more than one percent of the total number of the voting interests of an entity the voting interests of which are publicly traded, it shall be presumed, in the absence of evidence to the contrary, that those voting interests are owned by nationals of such Party on the basis of a statement by a duly authorized officer of the entity that, according to the records of the entity, those individuals have addresses in the territory of such Party and that the signatory to the statement has no knowledge or reason to believe that those voting interests are owned by individuals who are not nationals of such Party.

investor of a third country means an investor other than an investor of a Party, that makes or has made an investment.

investor of the United States of America for purposes of paragraph 4 of Article 1607 shall have the same meaning as in Annex 1607.3.

joint venture means an association of two or more persons or entities where the relationship among those associated persons or entities does not, under the laws in force in the territory of the Party in which the investment is made, constitute a corporation, a partnership or a trust and where all those associated persons or entities own or will own assets of a business enterprise, or directly or indirectly own or will own voting interests in an entity that carries on a business enterprise.

located in the territory of a Party means, with respect to a business enterprise, a business enterprise that is, or in the case of an establishment will be, carried on in the territory of such Party and has, or in the case of an establishment will have therein:

a) a place of business;
b) an individual or individuals employed or self-employed in connection with the business; and
c) assets used in carrying on the business.

measure shall have the same meaning as in Article 201, except that it shall also include any published policy.

ownership means beneficial ownership and with respect to assets also includes the beneficial ownership of a leasehold interest in such assets.

person means a Party or agency thereof, a province or state of a Party or agency thereof, or a national of a Party.

voting interest with respect to

a) a corporation with share capital, means a voting share;
b) a corporation without share capital, means an ownership interest in the assets thereof that entitles the owner to rights similar to those enjoyed by the owner of a voting share; and
c) a partnership, trust, joint venture or other organization means an ownership interest in the assets thereof that entitles the owner

to receive a share of the profits and to share in the assets on dissolution.

voting share means a share in the capital of a corporation to which is attached a voting right ordinarily exercisable at meetings of shareholders of the corporation and to which is ordinarily attached a right to receive a share of the profits, or to share in the assets of the corporation on dissolution, or both.

Annex 1607.3

1. Unless otherwise expressly provided in this Annex, words and phrases used herein shall be interpreted and construed in accordance with the provisions of the *Investment Canada Act* and its regulations.

2. The *Investment Canada Act* and its regulations shall be amended as of the date of entry into force of this Agreement in accordance with the provisions that follow:

a) Canada may continue to review the acquisition of control of a Canadian business by an investor of the United States of America, in order to determine whether or not to permit the acquisition, provided that the value of the gross assets of the Canadian business is not less than the following applicable threshold.

i) The threshold for the review of a direct acquisition of control of a Canadian business shall be:

A) for the twelve-month period commencing on the date of entry into force of this Agreement, current Canadian $25 million;

B) for the twelve-month period commencing on the first anniversary of the date of entry into force of this Agreement, current Canadian $50 million;

C) for the twelve-month period commencing on the second anniversary of the date of entry into force of this Agreement, current Canadian $100 million;

D) for the twelve-month period commencing on the third anniversary of the date of entry into force of this Agreement, current Canadian $150 million; and

E) commencing on the fourth anniversary of the date of entry into force of this Agreement, Canadian $150 million in constant third-anniversary-year dollars.

ii) The threshold for the review of an indirect acquisition of control of a Canadian business shall be:

A) for the twelve-month period commencing on the date of entry into force of this Agreement, current Canadian $100 million;

B) for the twelve-month period commencing on the first anniversary of the date of entry into force of this Agreement, current Canadian $250 million;

C) for the twelve-month period commencing on the second anniversary of the date of entry into force of this Agreement, current Canadian $500 million; and

D) commencing on the third anniversary of the date of entry into force of this Agreement, there shall be no review of indirect acquisitions implemented on or after that date.

b) In the event that a Canadian business controlled by an investor of the United States of America is being acquired by an investor of a third country, Canada may continue to review such acquisition to determine whether or not to permit it, provided that the value of the gross assets of the business is not less than the applicable threshold referred to in this paragraph.

c) i) The Canadian $150 million in constant third-anniversary-year dollars referred to in subparagraph (a)(i)(E) shall be determined in January of each year after 1992 by use of the following formula:

$$\frac{\text{Current GDP Price Index}}{\text{Effective Date GDP Price Index}} \quad \text{times} \quad \$150 \text{ million}$$

where:

GDP Price Index means the seasonally adjusted implicit quarterly price index for Gross Domestic Product at market prices as most recently published by Statistics Canada, or any successor index thereto.

Current GDP Price Index means the arithmetic average of the GDP Price Indices for the four most recent consecutive quarters available on the date on which a calculation takes place.

Effective Date GDP Price Index means the arithmetic average of the GDP Price Indices for the four most recent consecutive quarters available as of January 1, 1992.

ii) The amounts obtained by applying the formula set out in (i) shall be rounded to the nearest million dollars.

3. The guidelines or regulations pursuant to the *Investment Canada Act* shall be amended to provide that Canada shall comply with the provisions of paragraphs 2 and 3 of Article 1602 and the provisions of Article 1603.

4. The amendments described in paragraphs 2 and 3 and the provisions of paragraph 2 of Article 1602 and of Article 1603 shall not apply in respect of the oil and gas and uranium-mining industries. These industries are subject to published policies that are implemented through the review process set out in the *Investment Canada Act*. The Parties shall by exchange of letters, prior to introduction of legislation to implement this Agreement by either Party in its respective legislature, set out the aforementioned policies, which policies shall be no more restrictive than those in effect on October 4, 1987.

5. For purposes of this Annex:

American shall have the same meaning as investor of the United States of America.

controlled by an investor of the United States of America, with respect to a Canadian business, means:

a) the ultimate direct or indirect control by such investor through the ownership of voting interests; or
b) the ownership by such investor of all or substantially all of the assets used in carrying on the Canadian business.

direct acquisition of control means an acquisition of control pursuant to the provisions of the *Investment Canada Act* other than an indirect acquisition of control.

indirect acquisition of control means an acquisition of control pursuant to the provisions of the *Investment Canada Act* through the acquisition of voting interests of an entity that controls, directly or indirectly, an entity in Canada carrying on the Canadian business where:

a) there is an acquisition of control described in subparagraph 28(1)(d)(ii) of the *Investment Canada Act;* and
b) the value, calculated in the manner prescribed, of the assets of the entity carrying on the Canadian business, and of all other entities in Canada, the control of which is acquired, directly or indirectly, amounts to not more than fifty percent of the value, calculated in the manner prescribed, of the assets of all entities the control of which is acquired, directly or indirectly, in the transaction of which the acquisition of control of the Canadian business forms a part.

investor of a third country means an individual, a government or an agency thereof or an entity that is not a Canadian within the meaning of the *Investment Canada Act* and is not an investor of the United States of America.

investor of the United States of America means

a) an individual who is a "national of the United States" or an individual who is "lawfully admitted for permanent residence" as those terms are defined in the existing provisions of the United States *Immigration and Nationality Act,* other than an individual who is a Canadian within the meaning of the *Investment Canada Act;*
b) a government of the United States of America, whether federal or state, or an agency thereof; or
c) an entity that is not Canadian-controlled as determined pursuant to subsections 26(1) and (2) of the *Investment Canada Act* and is American-controlled.

NOTE: For purposes only of determining whether an entity is "American-controlled" under paragraph (c), the rules in subsections 26 (1) and (2) of the *Investment Canada Act* shall be applied as though the references therein to "Canadian", "Canadians", "non-Canadian", "non-Canadians" and "Canadian-controlled", were references to "American", "Americans", "non-American", "non-Americans" and "American-controlled".

non-American means an individual, a government or an agency thereof or an entity that is not an American and is not a Canadian within the meaning of the *Investment Canada Act.*

Part Five
Financial Services

Chapter Seventeen: Financial Services

Trade is very important to Canada's financial services industry and, through its financial institutions, Canada is well represented in international financial markets. Among the larger groups of major financial services firms, the Canadian banks probably generate the largest share of foreign income and a considerable amount of that income is related to their U.S. operations and activities.

Canadian banks have been active in the U.S. for a long time while U.S. banks have only been able to provide a full range of banking services in Canada since 1980. Chapter Seventeen preserves the access that our respective financial institutions have to each other's market. Also, both Canada and the United States have agreed to continue liberalizing the rules governing their respective financial markets and to extend the benefits of such liberalization to institutions controlled by the other party.

Prior to 1978, Canadian and other foreign banks were generally permitted to operate in more than one state Indeed, Canadian banks had, and still have, retail and other banking operations in a number of states, unlike many of their U.S. competitors. These privileges, however, were subject to review after ten years. These privileges have been "grandfathered" indefinitely in Article 1702.

In the area of securities, Canadian banks in the United States will be able to underwrite and deal in securities of Canadian governments and their agents. Up until now, because of the 50-year old Glass-Steagall Act which separates commercial banking from the securities business, only dealers unaffiliated with a bank could underwrite these securities in the United States. Accordingly, a new business opportunity for Canadian banks has been created. At the same time, an important commitment from the United States will help bridge the gap between the pace of regulatory change in financial markets that has opened up between Canada and the United States. For the future, Canadian financial institutions are guaranteed, by Article 1702, that they will receive the same treatment as that accorded United States financial institutions with respect to amendments to the Glass-Steagall Act.

Article 1703 exempts U.S. firms and investors from some aspects of the federal "10/25" rule such that they will be treated the same as Canadians. The rule prevents any single non-resident from acquiring more than 10 percent of the shares, and all non-residents from acquiring more than 25 percent of the shares of a federally-regulated Canadian-controlled financial institution. The 10 percent limitation on any individual shareholder resident or non-resident will continue to be applied to the larger banks and thereby control of our financial system will be maintained in Canadian hands.

Additionally, U.S. bank subsidiaries in Canada will be exempted from the current 16 percent ceiling on the size of the foreign bank sector. Finally, all U.S. applications to establish operations in Canada have been subject to review. No changes to this review process are required. U.S. applications will continue to be reviewed on a case-by-case basis to ensure the suitability of the applicant, that it can make a positive contribution to Canada's financial markets, and that prudential concerns are met.

Financial institutions, other than insurance, are not covered by the dispute settlement procedures of the Agreement. Rather, both parties have agreed to consult and these consultations will take place between the Canadian Department of Finance and the United States Department of the Treasury.

The chapter on financial services builds on the federal government's commitment to provide more competition among financial institutions with the resultant benefits to consumers. At the same time, control of our financial system will remain in Canadian hands while a new business opportunity has been opened up for our banks in the U.S.

PART FIVE
FINANCIAL SERVICES

Chapter Seventeen

Financial Services

Article 1701: Scope and Coverage

1. This Part and Articles 1601, 2001, 2002, 2003, 2010, 2101, 2104, 2105 and 2106 shall apply to financial services and constitute the entirety of the agreement between the Parties with respect to financial services. No other provision of this Agreement confers rights or imposes obligations on the Parties with respect to financial services.

2. The provisions of this Part, with the exception of Article 1601 as referred to in paragraph 1, shall not apply to any measure of a political subdivision of either Party.

Article 1702: Commitments of the United States of America

1. To the extent that domestic and foreign banks, including bank holding companies and affiliates thereof, are permitted to engage in the dealing in, underwriting, and purchasing of debt obligations backed by the full faith and credit of the United States of America or its political subdivisions, the United States of America shall permit domestic and foreign banks, including bank holding companies and affiliates thereof, to engage in the dealing in, underwriting, and purchasing of debt obligations backed to a comparable degree by Canada or its political subdivisions, which include, but are not limited to, obligations of or guaranteed by Canada or its political subdivisions, and obligations of agents thereof where the obligations of the agents are incurred in their capacity as agents for their principals and the principals are ultimately and unconditionally liable in respect of the obligations.

2. The United States of America shall not adopt or apply any measure under federal law that would accord treatment less favourable to Canadian-controlled banks than that accorded on October 4, 1987, with respect to their ability to establish and operate, outside their home states, any state branch, state agency or bank or commercial lending company subsidiary.

3. The United States of America shall accord Canadian-controlled financial institutions the same treatment as that accorded United States financial institutions with respect to amendments to the *Glass-Steagall Act* and associated legislation and resulting amendments to regulations and administrative practices.

4. This Part shall not be construed as representing the mutual satisfaction of the Parties concerning the treatment of their respective financial institutions. Accordingly, the United States of America shall, subject to Canada's commitment to consult and to liberalize further the rules governing its markets and to extend the benefits of such liberalization to United States-controlled financial institutions established under the laws of Canada, continue to provide Canadian-controlled financial institutions established under the laws of the United States of America with the rights and privileges they now have in the United States market as a result of existing laws, regulations, practices and stated policies of the United States of America. The continued provision of such rights and privileges shall be subject to normal regulatory and prudential considerations.

Article 1703: Commitments of Canada

1. United States persons ordinarily resident in the United States of America shall not be subject to restrictions that limit foreign ownership of Canadian-controlled financial institutions and, in accordance with this obligation, such United States persons shall not be subject to:

a) subsection 110(1) of the *Bank Act;*

b) subsections 19(1) and 20(2) of the *Canadian and British Insurance Companies Act;*

c) subsections 11(1) and 12(2) of the *Investment Companies Act;*

d) subsections 45(1) and 46(2) of the *Loan Companies Act (Canada);* or

e) subsections 38(1) and 39(2) of the *Trust Companies Act (Canada).*

This paragraph shall not apply to provincially constituted financial institutions.

2. Canada shall exempt United States-controlled Canadian bank subsidiaries, individually and collectively, from the limitations on the total domestic assets of foreign bank subsidiaries in Canada and, in accordance with this obligation, Canada shall:

a) not refuse to incorporate a United States-controlled Canadian bank subsidiary, nor refuse to increase the authorized capital of such subsidiaries solely on the ground that such incorporation or increase would contravene subsection 302(7) of the *Bank Act;*

b) not apply the provisions of subsection 174(6) of the *Bank Act* to such subsidiaries;

c) exempt such subsidiaries from the requirement to obtain approval of the Minister of Finance prior to opening additional branches within Canada; and

d) permit, subject to prudential requirements of general application, including measures regarding transactions between related parties, a United States-controlled Canadian bank subsidiary to transfer loans to its parent.

3. Canada shall not use review powers governing the entry of United States-controlled financial institutions in a manner inconsistent with the aims of this Part.

4. This Part shall not be construed as representing the mutual satisfaction of the Parties concerning the treatment of their respective financial institutions. Accordingly, Canada shall, subject to the United States commitment to consult and to liberalize further the rules governing its markets and to extend the benefits of such liberalization to Canadian-controlled financial institutions established under the laws of the United States of America, continue to provide United States-controlled financial institutions established under the laws of Canada with the rights and privileges they now have in the Canadian market as a result of existing laws, regulations, practices and stated policies of Canada. The continued provision of such rights and privileges is subject to normal regulatory and prudential considerations.

Article 1704: Notification and Consultation

1. To the extent possible, each Party shall make public, and allow opportunity for comment on, legislation and proposed regulations regarding any matter covered by this Part.

2. Either Party may request consultations at any time regarding a matter covered by this Part. Any consultations under this Part shall be between the Canadian Department of Finance and the United States Department of the Treasury.

Article 1705: General Provisions

1. Any reference to a specific Act or portion thereof in this Part, shall be deemed to include a reference to any successor Act or portion thereof.

2. Each Party may deny the benefits of this Part to a company of the other Party if the Party establishes that such company is controlled by a person of a third country.

Article 1706: Definitions

For purposes of this Part:

administrative practices means all actions, practices and procedures by any federal agency having regulatory responsibility over the activities of financial institutions, including but not limited to rules, orders, directives, and approvals;

Canadian-controlled means controlled, directly or indirectly, by one or more individuals who are ordinarily resident in Canada;

A company is **controlled** by one or more persons if

a) shares of the company to which are attached more than 50 percent of the votes that may be cast to elect directors of the company are beneficially owned by the person or persons; and the votes attached to those shares are sufficient to elect a majority of the directors of the company, or

b) the person or persons has or have, directly or indirectly, control in fact of the company;

company means any kind of corporation, company, association, or other organization, legally authorized to do business under the laws and regulations of a Party or a political subdivision thereof;

existing means in effect at the time of the entry into force of this Agreement;

financial institution is any company authorized to do business under laws of a Party or its political subdivisions relating to financial institutions as defined by a Party, or a holding company thereof;

financial service is a service of a financial nature offered by a financial institution excluding the underwriting and selling of insurance policies;

measure includes any law, regulation, procedure, requirement or practice;

ordinarily resident in a country generally means sojourning in that country for a period of, or periods the aggregate of which is, 183 days or more during the relevant year;

political subdivision includes a province, state, and local government;

third country means any country other than Canada or the United States of America or any territory not a part of the territory of the Parties;

United States-controlled means controlled, directly or indirectly, by one or more United States nationals;

United States national means an individual who is a United States citizen or permanent resident of the United States of America; and

United States persons ordinarily resident in the United States of America, for purposes of paragraph 1 of Article 1703, means:

a) in the case of a company, a company legally constituted or organized under the laws of the United States of America and controlled, directly or indirectly, by one or more United States individuals described in subparagraph (b), and
b) in the case of an individual, one who is ordinarily resident in the United States of America.

Part Six
Institutional Provisions

Part Six contains both the general dispute settlement provisions and the special arrangements for dealing with antidumping and countervailing duties. In addition, this Part creates the institutional framework for managing and implementing the trade agreement.

Chapter Eighteen: Institutional Provisions

This Chapter establishes the necessary institutional provisions to provide for the joint management of the Agreement and to avoid and settle any disputes between the Parties respecting the interpretation or application of any element of the Agreement. Its essential features are economy, joint decision-making and effective dispute resolution. Its basic objective is to promote fairness, predictability and security by giving each Partner an equal voice in resolving problems through ready access to objective panels to resolve disputes and authoritative interpretations of the Agreement.

To ensure that the Agreement is effectively implemented and enforced, Chapter Eighteen provides for:

- *mandatory notification of any measure (Article 1803);*
- *mandatory provision of information to the other Party on any measure, whether or not it has been notified(Article 1803);*
- *consultations at the request of either Party concerning any measure or any other matter which affects the operation of the Agreement, with a view to arriving at a mutually satisfactory resolution (Article 1804);*
- *referral to a Canada-United States Trade Commission, should resolution through consultations fail (Article 1805); and*
- *use of dispute settlement procedures should the Commission fail to arrive at a mutually satisfactory resolution. Procedures are:*
    - *compulsory arbitration, binding on both Parties, for disputes arising from the interpretation and application of the safeguards provision (Article 1103);*
    - *binding arbitration in all other disputes (Article 1806) where both Parties mutually agree; and*
    - *panel recommendations to the Commission, which, in turn, is mandated to agree on a resolution of the dispute (Article 1807).*

These provisions are in addition to the special dispute settlement mechanism established in Chapter Nineteen to deal with antidumping and countervailing duty issues.

The Commission is composed of equal representatives of both Parties. The principal representative of each Party is the ministerial rank official responsible for international trade matters, or his or her designee. Regular Commission meetings are held once a year, alternating between the two countries. As a practical matter, the day-to-day work of the Commission will be by officials of the two governments responsible for individual issues acting as working groups mandated by the Commission.

Arbitrators are selected by the Commission on such terms and in accordance with such procedures as it may adopt. Panels are composed of five members: two Canadians, two Americans, and a fifth member chosen jointly. Panelists are normally chosen from a roster developed by the Commission. Each Party chooses its national members, while the Commission chooses the fifth member. If the Commission is unable to agree on a choice, the other four members choose; should that fail, the fifth member is selected by lot.

Panels are allowed to establish their own rules of procedure, unless the Commission decides otherwise. There will be a right for at least one hearing before the panel, and the opportunity to provide written submissions and rebuttal arguments. Panel proceedings are confidential. All consultations and panel proceedings are subject to time limits, to ensure prompt resolution of disputes.

In the case of arbitral awards, the aggrieved Party has the right to suspend the application of equivalent benefits under the Agreement to the non-complying Party. In cases where the Commission does not reach agreement after receiving a Panel recommendation, and the dispute involves a measure that the aggrieved Party believes impairs its fundamental rights or anticipated benefits under the Agreement, it can suspend the application of equivalent benefits until the issue is resolved.

The combined effect of the institutional provisions and the three forms of dispute settlement (binding settlement of disputes over trade remedy actions, mutually agreed binding arbitration, and recommendatory panel procedures), will make Canada an equal partner in the resolution of disputes and provide for fair and effective solutions *to difficult problems. Canadians will know what the rules are and can be confident that they will have a voice in how they will be applied.*

PART SIX
INSTITUTIONAL PROVISIONS

Chapter Eighteen

Institutional Provisions

Article 1801: Application

1. Except for the matters covered in Chapter Seventeen (Financial Services) and Chapter Nineteen (Binational Dispute Settlement in Antidumping and Countervailing Duty Cases), the provisions of this Part shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement or whenever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Article 2011, unless the Parties agree to use another procedure in any particular case.

2. Disputes arising under both this Agreement and the *General Agreement on Tariffs and Trade,* and agreements negotiated thereunder (GATT), may be settled in either forum, according to the rules of that forum, at the discretion of the complaining Party.

3. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article 1805 or the GATT with respect to any matter, the procedure initiated shall be used to the exclusion of any other.

Article 1802: The Commission

1. The Parties hereby establish the Canada-United States Trade Commission (the Commission) to supervise the implementation of this Agreement, to resolve disputes that may arise over its interpretation and application, to oversee its further elaboration, and to consider any other matter that may affect its operation.

2. The Commission shall be composed of representatives of both Parties. The principal representative of each Party shall be the cabinet-level officer or Minister primarily responsible for international trade, or their designees.

3. The Commission shall convene at least once a year in regular session to review the functioning of this Agreement. Regular sessions of the Commission shall be held alternately in the two countries.

4. The Commission may establish, and delegate responsibilities to, ad hoc or standing committees or working groups and seek the advice of non-governmental individuals or groups.

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

Article 1803: Notification

1. Each Party shall provide written notice to the other Party of any proposed or actual measure that it considers might materially affect the operation of this Agreement. The notice shall include, whenever appropriate, a description of the reasons for the proposed or actual measure.

2. The written notice shall be given as far in advance as possible of the implementation of the measure. If prior notice is not possible, the Party implementing the measure shall provide written notice to the other Party as soon as possible after implementation.

3. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not previously notified.

4. The provision of written notice shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1804: Consultations

1. Either Party may request consultations regarding any actual or proposed measure or any other matter that it considers affects the operation of this Agreement, whether or not the matter has been notified in accordance with Article 1803.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions in this Agreement.

3. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article 1805: Initiation of Procedures

1. If the Parties fail to resolve a matter through consultations within 30 days of a request for consultations under Article 1804, either Party may request in writing a meeting of the Commission. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 days and shall endeavour to resolve the dispute promptly.

2. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to both Parties, in an effort to reach a mutually satisfactory resolution of the dispute.

Article 1806: Arbitration

1 If a dispute has been referred to the Commission under Article 1805 and has not been resolved within a period of 30 days after such referral, the Commission:

a) shall refer a dispute regarding actions taken pursuant to Chapter Eleven (Emergency Action); and

b) may refer any other dispute,

to binding arbitration on such terms as the Commission may adopt.

2. Unless the Commission directs otherwise, an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of paragraphs 1, 3 and 4 of Article 1807.

3. If a Party fails to implement in a timely fashion the findings of a binding arbitration panel and the Parties are unable to agree on appropriate compensation or remedial action, then the other Party shall have the right to suspend the application of equivalent benefits of this Agreement to the non-complying Party.

Article 1807: Panel Procedures

1. The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panelists. Wherever possible, panelists shall be chosen from this roster. In all cases, panelists shall be chosen strictly on the basis of objectivity, reliability and sound judgment and, where appropriate, have expertise in the particular matter under consideration. Panelists shall not be affiliated with or take instructions from either Party.

2. If a dispute has been referred to the Commission under Article 1805 and has not been resolved within a period of 30 days after such referral, or within such other period as the Commission has agreed upon, or has not been referred to arbitration pursuant to Article 1806, the Commission, upon request of either Party, shall establish a panel of experts to consider the matter. A panel shall be deemed to be established from the date of the request of a Party.

3. The panel shall be composed of five members, at least two of whom shall be citizens of Canada and at least two of whom shall be citizens of the United States. Within 15 days of establishment of the panel, each Party, in consultation with the other Party, shall choose two members of the panel and the Commission shall endeavour to agree on the fifth who shall chair the panel. If a Party fails to appoint its panelists within 15 days, such panelists shall be selected by lot from among its citizens on the roster described in paragraph 1. If the Commission is unable to agree on the fifth panelist within such period, then, at the request of either Party, the four appointed panelists shall decide on the fifth panelist within 30 days of establishment of the panel. If no agreement is possible, the fifth panelist shall be selected by lot from the roster described in paragraph 1.

4. The panel shall establish its rules of procedure, unless the Commission has agreed otherwise. The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential. Unless otherwise agreed by the Parties, the panel shall base its decision on the arguments and submissions of the Parties.

5. Unless the Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing findings of fact, its determination as to whether the

measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification and impairment in the sense of Article 2011, and its recommendations, if any, for resolution of the dispute. Where feasible, the panel shall afford the Parties opportunity to comment on its preliminary findings of fact prior to completion of its report. If requested by either Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect on the other Party of any measure found not to conform with the obligations of the Agreement. Panelists may furnish separate opinions on matters not unanimously agreed.

6. Within 14 days of issuance of the initial report of the panel, a Party disagreeing in whole or in part shall present a written statement of its objections and the reasons for those objections to the Commission and the panel. In such an event, the panel on its own motion or at the request of the Commission or either Party may request the views of both Parties, reconsider its report, make any further examination that it deems appropriate and issue a final report, together with any separate opinions, within 30 days of issuance of the initial report.

7. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions, and any written views that either Party desires to be published.

8. Upon receipt of the final report of the panel, the Commission shall agree on the resolution of the dispute, which normally shall conform with the recommendation of the panel. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Article 2011 or, failing such a resolution, compensation.

9. If the Commission has not reached agreement on a mutually satisfactory resolution under paragraph 8 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide), and a Party considers that its fundamental rights (under this Agreement) or benefits (anticipated under this Agreement) are or would be impaired by the implementation or maintenance of the measure at issue, the Party shall be free to suspend the application to the other Party of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

Article 1808: Referrals of Matters from Judicial or Administrative Proceedings

1. In the event an issue of interpretation of this Agreement arises in any domestic judicial or administrative proceeding of a Party which either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, the Parties shall endeavour to agree on the interpretation of the applicable provisions of this Agreement.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation to the court or administrative body in accordance with the rules of that forum. If the Parties are unable to reach agreement on the interpretation of the provision of this Agreement at issue, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Chapter Nineteen: Binational Dispute Settlement in Antidumping and Countervailing Duty Cases

In negotiating a better and more balanced framework for the conduct of trade between Canada and the United States, Canada sought to increase predictability and security for Canadian exporters to the United States. Without this predictability, Canadian companies cannot be sufficiently confident to take advantage of other provisions of the Agreement, such as the elimination of tariffs or improved access to government procurement.

Trade remedy procedures, such as antidumping and countervailing duty petitions, can pose a serious threat to predictability and security of access. In recent years, actions taken under U.S. trade remedy laws against Canadian exports have had a detrimental impact on investment and employment in Canada, and have become a major irritant in Canada-U.S. relations.

In this chapter, the two governments agree that in order for both sides to take equal advantage of the benefits of the Agreement, there will be need for conditions of fair competition to ensure that economic actors on both sides of the border have equal access to the whole free-trade area established by the Agreement. This will be achieved as a result of a three-track set of obligations:

- *the development over a five- to seven-year period of mutually advantageous rules governing government subsidies and private anti-competitive pricing practices such as dumping, which are now controlled through the unilateral application of countervailing and antidumping duties;*
- *bilateral review of any changes in existing countervailing or antidumping laws and regulations for consistency with the GATT and the object and purpose of the Agreement; and*
- *the replacement of judicial review by domestic courts of countervailing and antidumping final orders by a bilateral panel.*

Article 1907 provides that the two governments will work towards establishing a new regime to address problems of dumping and subsidization to come into effect no later than at the end of the seventh year. During the course of the current negotiations, the two *sides recognized that developing a new regime was a complex task and would require more time. The goal of any new regime, however, will be to obviate the need for border remedies, as are now sanctioned by the GATT Antidumping and Subsidies Codes, for example, by developing new rules on subsidy practices and relying on domestic competition law. Thus the goal of the two governments remains the establishment of a new regime to replace current trade remedy law well before the end of the transition period.*

In the meantime, Chapter Nineteen includes provisions to prevent abuse of the current system, thus allowing Canadian exporters to compete in the U.S. market on a more secure, predictable and equitable footing. In Article 1904, the two governments have agreed to a unique dispute settlement mechanism that guarantees the impartial application of their respective antidumping and countervailing duty laws. Either government may seek a review of an antidumping or countervailing duty determination by a bilateral panel with binding powers. This will mean that producers in both countries will continue to have the right to seek redress from dumped or subsidized imports, but any relief granted will be subject to challenge and review by a binational panel which will determine whether existing laws were applied correctly and fairly. Canadian producers who have in the past complained that political pressures in the United States have disposed U.S. officials to side with complainants will now be able to appeal to a bilateral tribunal.

Findings by a panel will be binding on both governments. Should the panel determine that the law was properly applied, the matter is closed. If it finds that the administering authority (the Department of Commerce or the International Trade Commission in the United States or the Department of National Revenue or the Canadian Import Tribunal in Canada) erred on the basis of the same standards as would be applied by a domestic court, it can send the issue back to the administering authority to correct the error and make a new determination.

In order to provide symmetry in the application of panel reviews, both governments will amend their law to allow all final decisions to be subject to bilateral review.

Panelists who will review antidumping and countervailing duty decisions will be chosen from a roster of individuals who have previously agreed to act as panelists. Because of the judicial nature of *the review, the majority of panelists will be lawyers. Nevertheless, the procedures allow for at least two non-lawyers who can bring other expertise to bear on any panel decision, such as business experience.*

Panels must be acceptable to both sides. Each government will choose two panelists and jointly choose the fifth; if they cannot agree, the four chosen panelists will pick a fifth from the roster; if they cannot agree, the fifth panelist will be chosen by lot. Each government will be able to exercise two peremptory challenges of panelists chosen by the other side, for example, by indicating that a proposed panelist is not suitable to act on a particular issue.

Decisions will be rendered quickly based on strict time limits built into the procedures. These limits are sufficiently generous to allow the parties opportunity to develop arguments and to challenge the arguments of the other side. While only the two governments can seek the establishment of a panel, as a practical matter, many of the issues will involve private parties and these will be allowed to make representations before the panel. In addition, both governments are obligated to invoke the panel procedure if petitioned by pri[illegible] *parties.*

To ensure fairness in the integrity of the process, elaborate procedures have been developed to address any potential for the appearance of unfairness or corruption. In the unlikely event that a panelist has a conflict of interest or there has been a serious miscarriage of justice, either government can invoke an extraordinary challenge procedure involving a panel of three former judges who will determine whether or not the allegations are valid and whether or not a new panel wil be required to review the issues.

The two governments will establish a small secretariat to administer these review procedures and to give aggrieved parties ready access to information. Additionally, they will work out detailed rules of procedures for panels and a code of conduct for panelists.

The two governments agree in Article 1903 that changes to existing antidumping and countervailing duty legislation apply to each other only following consultation and if specifically provided for in the new legislation. Moreover, either government may ask a bilateral panel to review such changes in light of the object and purpose of the Agreement, their rights and obligations under the GATT Antidumping and Subsidies Codes and previous panel decisions. Should a panel *recommend modifications, the parties will consult to agree on such modifications. Failure to reach agreement gives the other party the right to take comparable legislative or equivalent executive action or terminate the Agreement.*

The combined effect of bilateral review of existing law and the development of a new set of rules will be to ensure that by the time all tariffs are removed and other aspects of the Agreement phased in, Canadian firms will have not only more open access, but also more secure and more predictable access. At the same time, Canada's capacity to pursue regional development and social welfare programs remains unimpaired. Indeed, it has been strengthened.

Chapter Nineteen

Binational Panel Dispute Settlement in Antidumping and Countervailing Duty Cases

Article 1901: General Provisions

1. The provisions of Article 1904 shall apply only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of the other Party.

2. For the purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.

Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of the other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice, and judicial precedents.

2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:

a) such amendment shall apply to goods from the other Party only if such application is specified in the amending statute;

b) the amending Party notifies the other Party in writing of the amending statute as far in advance as possible of the date of enactment of such statute;

c) following notification, the amending Party, upon request of the other Party, consults with the other Party prior to the enactment of the amending statute; and

d) such amendment, as applicable to the other Party, is not inconsistent with

   i) the *General Agreement on Tariffs and Trade* (GATT), *the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code), or the *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (the Subsidies Code), or

   ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the two countries while maintaining effective disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.

Article 1903: Review of Statutory Amendments

1. A Party may request in writing that an amendment to the other Party's antidumping statute or countervailing duty statute be referred to a panel for a declaratory opinion as to whether:

a) the amendment does not conform to the provisions of subparagraph (d)(i) or (d)(ii) of paragraph 2 of Article 1902; or

b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of subparagraph (d)(i) or (d)(ii) of paragraph 2 of Article 1902.

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

a) the Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking remedial legislation with respect to the statute of the amending Party;

b) if remedial legislation is not enacted within nine months from the end of the 90-day consultation period referred to in subparagraph (a) and no other agreement has been reached, the Party that requested the panel may

    i) take comparable legislative or equivalent executive action, or

    ii) terminate the Agreement upon 60-day written notice to the other Party.

Article 1904: Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, the Parties shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. Either Party may request that a panel review, based upon the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of either Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice, and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into this Agreement.

3. The panel shall apply the standard of review described in Article 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other Party within 30 days following the date of publication of the final determination in question in the *Federal Register* or the *Canada Gazette*. In the case of final determinations that are not published in the *Federal Register* or the *Canada Gazette*, the importing Party shall immediately notify the other Party of such final determination where it involves a good from the other Party, and the other Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. Either Party on its own initiative may request review of a final determination by a panel and shall, upon request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of a final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had standing to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the facts and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a

petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

a) the judicial review procedures of either Party, or

b) cases appealed under those procedures,

with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if either Party requests a panel with respect to that determination within the time limits set forth in this Article. Neither Party shall provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. The provisions of this Article shall not apply where:

a) neither Party seeks panel review of a final determination;

b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither Party sought panel review of that original final determination; or

c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the entry into force of this Agreement.

13. Where, within a reasonable time after the panel decision is issued, a Party alleges that:

a) i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

   ii) the panel seriously departed from a fundamental rule of procedure, or

   iii) the panel manifestly exceeded its powers, authority or jurisdiction set forth in this Article, and

b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

14. To implement the provisions of this Article, the Parties shall adopt rules of procedure by January 1, 1989. Such rules shall be based, where appropriate, upon judicial rules of appellate procedure, and shall include rules concerning the content and service of requests for panels, a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding, the protection of business proprietary and other privileged information (including sanctions against persons participating before panels for improper release of such information), participation by private persons, limits on panel review to errors alleged by the Parties or private persons, filing and service, computation and extensions of time, the form and content of briefs and other papers, pre- and post-hearing conferences, oral argument, requests for rehearing, and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

a) 30 days for the filing of the complaint;

b) 30 days for designation or certification of the administrative record and its filing with the panel;

c) 60 days for the complainant to file its brief;

d) 60 days for the respondent to file its brief;

e) 15 days for the filing of reply briefs;

f) 15 to 30 days for the panel to convene and hear oral argument; and

g) 90 days for the panel to issue its written decision.

15. The Parties shall, in order to achieve the objectives of this Article, amend their statutes and regulations, as necessary, with respect to antidumping or countervailing duty proceedings involving goods of the other Party. In particular, without limiting the generality of the foregoing:

a) Canada shall amend sections 56 and 58 of the *Special Import Measures Act,* as amended, to allow the United States of America or a United States manufacturer, producer, or exporter, without regard to payment of duties, to make a written request for a re-determination; and section 59 to require the Deputy Minister to make a ruling on a request for a re-determination within one year of a request to a designated officer or other customs officer;

b) Canada shall amend section 28(4) of the *Federal Court Act* to render that section inapplicable; and shall provide in its statutes or regulations that persons (including producers of goods subject to an investigation) have standing to ask Canada to request a panel review where such persons would be entitled to commence domestic procedures for judicial review if the final determination were reviewable by the Federal Court pursuant to section 28;

c) the United States of America shall amend section 301 of the *Customs Courts Act of 1980,* as amended, and any other relevant provisions of law, to eliminate the authority to issue declaratory judgments;

d) each Party shall amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

e) each Party shall amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Party to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;

f) Canada shall amend the *Special Import Measures Act*, and any other relevant provisions of law, to provide that the following actions of the Deputy Minister shall be deemed for the purposes of this Article to be final determinations subject to judicial review:

   i) a determination by the Deputy Minister pursuant to section 41,

   ii) a re-determination by the Deputy Minister pursuant to section 59, and

   iii) a review by the Deputy Minister of an undertaking pursuant to section 53(1); and

g) each Party shall amend its statutes or regulations to ensure that:

   i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and

   ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties and to other persons entitled to commence such review procedures of the same final determination no later than ten days prior to the latest date on which a panel may be requested.

Article 1905: Prospective Application

The provisions of this Chapter shall apply only prospectively to:

a) final determinations of a competent investigating authority made after the entry into force of this Agreement; and

b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the entry into force of this Agreement.

Article 1906: Duration

The provisions of this Chapter shall be in effect for five years pending the development of a substitute system of rules in both countries for antidumping and countervailing duties as applied to their bilateral trade. If no such system of rules is agreed and implemented at the end of five years, the provisions of this Chapter shall be extended for a further two years. Failure to agree to implement a new regime at the end of the two-year extension shall allow either Party to terminate the Agreement on six-month notice.

Article 1907: Working Group

1. The Parties shall establish a Working Group that shall:

a) seek to develop more effective rules and disciplines concerning the use of government subsidies;

b) seek to develop a substitute system of rules for dealing with unfair pricing and government subsidization; and

c) consider any problems that may arise with respect to the implementation of this Chapter and recommend solutions, where appropriate.

2. The Working Group shall report to the Parties as soon as possible. The Parties shall use their best efforts to develop and implement the substitute system of rules within the time limits established in Article 1906.

Article 1908: Consultations

The Parties shall each designate one or more officials to be responsible for ensuring that consultations take place, where required, so that the provisions of this Chapter are carried out expeditiously.

Article 1909: Establishment of Secretariat

1. The Parties shall establish permanent Secretariat offices to facilitate the operation of this Chapter and the work of panels or committees that may be convened pursuant to this Chapter.

2. The permanent offices of the Secretariat shall be in Washington, District of Columbia, and in the National Capital Region of Canada.

3. Each Party shall be responsible for the operating cost of its Secretariat office.

4. The United States of America shall appoint an individual to serve as secretary of the United States section of the Secretariat who shall be responsible for all administrative matters involving the Secretariat in the United States of America.

5. Canada shall appoint an individual to serve as secretary of the Canadian section of the Secretariat who shall be responsible for all administrative matters involving the Secretariat in Canada.

6. The secretaries of the United States and Canadian sections of the Secretariat shall manage their respective Secretariat offices.

7. The Secretariat may provide support for the Commission established pursuant to Article 1802 if so directed by the Commission.

8. The secretaries shall act jointly to service all meetings of panels or committees established pursuant to this Chapter. The secretary of the country in which a panel or committee proceeding is held shall prepare a record thereof and each secretary shall preserve an authentic copy of the same in the permanent offices.

9. Each secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the primary file number for briefs and other papers relating to such request.

10. Each secretary shall forward to the other copies of all official letters, documents, records or other papers received or filed with the Secretariat office pertaining to any proceeding before a panel or

committee, so that there shall be on file in each office of the Secretariat either the original or a copy of all official letters and other papers relating to the proceeding.

Article 1910: Code of Conduct

The Parties shall, by the date of the entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903 and 1904.

Article 1911: Definitions

For purposes of this Chapter,

administrative record means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;
b) a copy of the final determination of the competent investigating authority, including reasons for the determination;
c) all transcripts or records of conferences or hearings before the competent investigating authority; and
d) all notices published in the *Canada Gazette* or the *Federal Register* in connection with the administrative proceeding.

antidumping statute as referred to in Articles 1902 and 1903 means:

a) in the case of Canada, the relevant provisions of the *Special Import Measures Act,* as amended, and any successor statutes;
b) in the case of the United States of America, the relevant provisions of Title VII of the *Tariff Act of 1930,* as amended, and any successor statutes; and
c) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a) or (b) or indicates the standard of review to be applied.

competent investigating authority means:

a) in the case of Canada,
  i) the Canadian Import Tribunal, or its successor, or
  ii) the Deputy Minister of National Revenue for Customs and Excise as defined in the *Special Import Measures Act,* or his successor; and
b) in the case of the United States of America,
  i) the International Trade Administration of the United States Department of Commerce, or its successor, or
  ii) the United States International Trade Commission, or its successor.

countervailing duty statute as referred to in Articles 1902 and 1903 means:

a) in the case of Canada, the relevant provisions of the *Special Import Measures Act,* as amended, and any successor statutes;
b) in the case of the United States of America, section 303 and the relevant provisions of Title VII of the *Tariff Act of 1930,* as amended, and any successor statutes; and
c) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a) or (b) or indicates the standard of review to be applied.

final determination means:

a) in the case of Canada,
  i) an order or finding of the Canadian Import Tribunal under subsection 43(1) of the *Special Import Measures Act,*
  ii) an order by the Canadian Import Tribunal under subsection 76(4) of the *Special Import Measures Act,* continuing an order or finding made under subsection 43(1) of the Act with or without amendment,
  iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the *Special Import Measures Act,*
  iv) a re-determination by the Deputy Minister pursuant to section 59 of the *Special Import Measures Act,*
  v) a decision by the Canadian Import Tribunal pursuant to subsection 76(3) of the *Special Import Measures Act* not to initiate a review,

    - vi) a reconsideration by the Canadian Import Tribunal pursuant to subsection 91(3) of the *Special Import Measures Act,* and
    - vii) a review by the Deputy Minister of an undertaking pursuant to section 53(1) of the *Special Import Measures Act;* and

b) in the case of the United States of America,
- i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930,* as amended, including any negative part of such a determination,
- ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930,* as amended, including any affirmative part of such a determination,
- iii) a final determination, other than a determination in (iv), under section 751 of the *Tariff Act of 1930,* as amended,
- iv) a determination by the United States International Trade Commission under section 751(b) of the *Tariff Act of 1930,* as amended, not to review a determination based upon changed circumstances, and
- v) a determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

general legal principles includes principles such as standing, due process, rules of statutory construction, mootness, and exhaustion of administrative remedies.

remand means a referral back for a determination not inconsistent with the panel or committee decision.

standard of review means the following standards, as may be amended from time to time by a Party:

a) in the case of Canada, the grounds set forth in section 28(1) of the *Federal Court Act* with respect to all final determinations; and

b) in the case of the United States of America,
   i) the standard set forth in section 516A (b)(1)(B) of the *Tariff Act of 1930,* as amended, with the exception of a determination referred to in (ii), and
   ii) the standard set forth in section 516A (b)(1)(A) of the *Tariff Act of 1930,* as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the *Tariff Act of 1930,* as amended.

Annex 1901.2

Establishment of Binational Panels

1. Prior to the entry into force of the Agreement, the Parties shall develop a roster of individuals to serve as panelists in disputes under this Chapter. The Parties shall consult in developing the roster, which shall include 50 candidates. Each Party shall select 25 candidates, and all candidates shall be citizens of Canada or the United States of America. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment, and general familiarity with international trade law. Candidates shall not be affiliated with either Party, and in no event shall a candidate take instructions from either Party. Judges shall not be considered to be affiliated with either Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each Party shall appoint two panelists, in consultation with the other Party. The Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each Party shall have the right to exercise four peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other Party. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If a Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the Parties shall agree on the selection of a fifth panelist. If the Parties are unable to agree, the four appointed panelists shall select, by agreement, from the roster the fifth panelist within 60 days of the request for a panel. If there is no agreement among the four appointed panelists, the fifth panelist shall be selected by lot on the 61st day from the roster, excluding candidates eliminated by peremptory challenges.

4. Upon appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

5. Decisions of the panel shall be by majority vote and be based upon the votes of all members of the panel. The panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of panelists.

6. Panelists shall be subject to the code of conduct established pursuant to Article 1910. If a Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and if the Parties agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures of this Annex.

7. When a panel is convened pursuant to Article 1904, each panelist shall be required to sign:

a) a protective order for information supplied by the United States of America or its persons covering business proprietary and other privileged information; and

b) an undertaking for information supplied by Canada or its persons covering confidential, personal, business proprietary and other privileged information.

8. The United States of America shall establish appropriate sanctions for violations of protective orders issued by it and of undertakings given to Canada. Canada shall establish appropriate sanctions for violations of undertakings given to it and protective orders issued by the United States of America. Each Party shall enforce such sanctions with respect to any person within its jurisdiction. Failure by a panelist to sign a protective order or undertaking shall result in disqualification of the panelist.

9. If a panelist becomes unable to fulfill panel duties or is disqualified, proceedings of the panel shall be suspended pending the selection of a substitute panelist in accordance with the procedures of this Annex.

10. Subject to the code of conduct established by the Parties, and provided that it does not interfere with the performance of the duties of such panelist, a panelist may engage in other business during the term of the panel.

11. While acting as a panelist, a panelist may not appear as counsel before another panel.

12. With the exception of violations of protective orders or undertakings signed pursuant to paragraph 7, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.

13. The remuneration of panelists, their travel and lodging expenses, and all general expenses of the panel shall be borne equally by the Parties. Each panelist shall keep a record and render a final account of his time and expenses, and the panel shall keep a record and render a final account of all general expenses. The Commission shall establish amounts of remuneration and expenses that will be paid to the panelists.

Annex 1903.2

Panel Procedures Under Article 1903

1. The panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential, unless the Parties otherwise agree. The panel shall base its decisions solely upon the arguments and submissions of the Parties.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after its chairman is appointed, present to the Parties an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.

3. If the findings of the panel are affirmative, the panel may include in its report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of subparagraph 2(d) of Article 1902. In determining what, if any, recommendations are appropriate, the panel shall consider the extent to which the amending statute affects interests under this Agreement. Individual panelists may provide separate opinions on matters not unanimously agreed. The initial opinion of the panel shall become the final declaratory opinion, unless a Party requests a reconsideration of the initial opinion pursuant to paragraph 4.

4. Within 14 days of the issuance of the initial declaratory opinion, a Party disagreeing in whole or in part with the opinion may present a written statement of its objections and the reasons for those objections to the panel. In such event, the panel shall request the views of both Parties and shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion, together with dissenting or concurring views of individual panelists, within 30 days of the request for reconsideration.

5. Unless the Parties otherwise agree, the final declaratory opinion of the panel shall be published, along with any separate opinions of individual panelists and any written views that either Party may wish to be published.

6. Unless the Parties otherwise agree, meetings and hearings of the panel shall take place at the office of the amending Party's section of the Secretariat.

Annex 1904.13

Extraordinary Challenge Procedure

1. The Parties shall establish an extraordinary challenge committee, comprised of three members, within fifteen days of a request pursuant to paragraph 13 of Article 1904. The members shall be selected from a ten-person roster comprised of judges or former judges of a federal court of the United States of America or a court of superior jurisdiction of Canada. Each Party shall name five persons to this roster. Each Party shall select one member from this roster and the third shall be selected from the roster by the two members chosen by the Parties or, if necessary, by lot from the roster.

2. The Parties shall establish by January 1, 1989 rules of procedure for committees. The rules shall provide for a decision of a committee typically within 30 days of its establishment.

3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. Upon finding that one of the grounds set out in paragraph 13 of Article 1904 has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall affirm the original panel decision. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

Part Seven
Other Provisions

Chapter Twenty: Other Provisions

This chapter contains a range of miscellaneous provisions. Some deal with specific issues (such as intellectual property or cultural industries) or address an existing irritant in bilateral relations (such as cable retransmission rights) while others establish a general rule which affects the application of other chapters in the agreement (such as balance-of-payment measures or the treatment of monopolies).

In Article 104 of Chapter One, the Parties agreed on a general rule of interpretation that, where there is a conflict, the trade agreement takes precedence over all other agreements unless provided otherwise in a particular chapter. In Article 2001, the parties agree that the provisions of the 1980 tax convention between them takes precedence over the trade agreement.

In Article 2002, the two governments affirm their rights and obligations under the GATT, the International Monetary Fund and the OECD Code of Liberalization of Capital Movements with respect to balance-of-payments measures. In effect, the two governments agree that should either find it necessary to apply exchange controls or take trade actions (such as a surcharge or quota) to counteract a serious deterioration in its balance-of-payments position, it will do so in a manner consistent with these multilateral agreements. Additionally, they agree that they will not use balance-of-payments measures as a disguised restriction on trade, thus reiterating their multilateral commitments.

Article 2003 reproduces the standard national security clause of the GATT which applies to the rights and obligations provided in all but two chapters: energy, and government procurement. In the case of energy, the two governments have agreed on a more limited national security provision and the procurement chapter relies on the national security provision of the GATT Code on Government Procurement.

All international trade and economic agreements contain a national security provision giving the parties sufficient flexibility to deal with national emergencies, to ensure that no provision of the agreement can be interpreted to require a government to compromise *classified material, to limit trade in military goods or not to meet its commitments under the United Nations Charter.*

During the course of the negotiations, the two governments worked on an overall framework covering the protection of intellectual property rights (trademarks, copyright, patents, industrial design and trade secrets). In the end, a substantive chapter was dropped. Nevertheless, in Article 2004, the two governments agree to continue to cooperate and work toward better international intellectual property rules, particularly in the Uruguay Round of Multilateral Trade Negotiations where a working group on trade-related intellectual property issues has been established.

From the beginning of the negotiations, Canadians expressed concern that an agreement might erode the government's capacity to encourage and help Canada's cultural industries (film and video, music and sound recording, publishing, cable transmission and broadcasting) and thus to contribute to the development of Canada's unique cultural identity. In order to remove any ambiguity that Canada's unique cultural identity remains untouched by the Agreement, the two governments agreed in Article 2005 on a specific provision indicating that, with four very limited exceptions, nothing in this agreement affects the ability of either Party to pursue cultural policies. The specific exceptions are:

- *the elimination of tariffs on any inputs to, and products of, the cultural industries, such as musical instruments, cassettes, film, recording tape, records and cameras (Article 401);*
- *any requirement to sell a foreign-owned enterprise engaged in a cultural activity acquired indirectly through the purchase of its parent will be balanced by an offer to purchase the enterprise at fair open market value (paragraph 4 of Article 1607);*
- *both parties will provide copyright protection to owners of programs broadcast by distant stations and retransmitted by cable companies; this undertaking will be on a non-discriminatory basis; after Canadian legislation is implemented there will be an opportunity for further review of outstanding issues in both countries (Article 2006);*
- *the requirement that a magazine or newspaper must be typeset and printed in Canada in order for advertisers to be able to*

deduct their expenses for advertising space in that magazine will be eliminated (Article 2007).

In Article 2008 and an agreed exchange of letters, the two governments address a long-standing irritant involving plywood standards. The Canada Mortgage and Housing Corporation will decide by March 15, 1988 whether to allow the use of C-D grade plywood (a U.S. standard) for use in housing it finances. If it agrees, a series of tariff concessions will begin to be implemented on January 1, 1989. If not, the issue will be placed before a panel of experts. Once the panel has completed its work, the two governments will determine how to implement the tariff concessions specified in Article 2008.

In Article 2009, the two governments agree to grandfather the 1986 Memorandum of Understanding on Softwood Lumber. That Memorandum provided that Canada would apply a tax on the export of softwood lumber to the United States until such time as the producing provinces had adjusted certain stumpage practices.

Most trade agreements contain provisions to deal with policy measures which either government may adopt which, while technically not inconsistent with the obligations of the agreement, have the effect of nullifying or impairing benefits that could have been reasonably expected under the agreement. The most obvious such measure is the establishment of a monopoly or state enterprise. A government can, for example, instead of regulating an industry, establish a state enterprise and give it monopoly powers. If the sole purpose of the establishment of such an enterprise is to evade an obligation under the agreement, the other party can legitimately cry foul. Article 2010 establishes rules governing the establishment of monopolies (based on similar provisions in Article XVII of the GATT) while Article 2011 (based on Article XXIII of the GATT) provides a framework to address any claim of nullification and impairment.

PART SEVEN
OTHER PROVISIONS

Chapter Twenty

Other Provisions

Article 2001: Tax Convention

Nothing in this Agreement shall affect the rights and obligations of the Parties under the *1980 Convention between Canada and the United States of America with respect to Taxes on Income and on Capital (with Exchange of Notes)*, including any amendments or any successor convention. Articles XXV and XXVI of the Convention shall govern exclusively issues or matters involving the *Income Tax Act* of Canada or the *Internal Revenue Code* of the United States of America.

Article 2002: Balance of Payments

Notwithstanding any other provision of this Agreement, either Party may:

a) apply trade restrictions in accordance with Article XII of the *General Agreement on Tariffs and Trade,* including the Declaration on Trade Measures for Balance-of-Payments Purposes adopted by the GATT Contracting Parties 28 November 1979; or

b) apply restrictions to persons of the other Party on:

  i) the making of payments and transfers for current international transactions in conformity with Article VIII of the *Articles of Agreement of the International Monetary Fund,* or

  ii) international capital movements in accordance with Article 7, paragraphs (c) through (e), of the *1961 OECD Code of Liberalization of Capital Movements,*

provided that such restrictions do not constitute a means of arbitrary or unjustifiable discrimination between persons of the

Parties or a disguised restriction on the benefits accorded to persons or goods under this Agreement.

Article 2003: National Security

Subject to Articles 907 and 1308, nothing in this Agreement shall be construed:

a) to require any Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;

b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests,

  i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment,

  ii) taken in time of war or other emergency in international relations, or

  iii) relating to the implementation of national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or

c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2004: Intellectual Property

The Parties shall cooperate in the Uruguay Round of multilateral trade negotiations and in other international forums to improve protection of intellectual property.

Article 2005: Cultural Industries

1. Cultural industries are exempt from the provisions of this Agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph 4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 and 2007 of this Chapter.

2. Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.

Article 2006: Retransmission Rights

1. Each Party's copyright law shall provide a copyright holder of the other Party with a right of equitable and non-discriminatory remuneration for any retransmission to the public of the copyright holder's program where the original transmission of the program is carried in distant signals intended for free, over-the-air reception by the general public. Each Party may determine the conditions under which the right shall be exercised. For Canada, the date on which a remuneration system shall be in place, and from which remuneration shall accrue, shall be twelve months after the amendment of Canada's *Copyright Act* implementing Canada's obligations under this paragraph, and in any case no later than January 1, 1990.

2. Each Party's copyright law shall provide that:

a) retransmission to the public of program signals not intended in the original transmission for free, over-the-air reception by the general public shall be permitted only with the authorization of the holder of copyright in the program; and

b) where the original transmission of the program is carried in signals intended for free, over-the-air reception by the general public, willful retransmission in altered form or non-simultaneous retransmission of signals carrying a copyright holder's program shall be permitted only with the authorization of the holder of copyright in the program.

3. Nothing in paragraph 2(b) shall be construed to prevent a Party from:

a) maintaining those measures in effect on October 4, 1987 that

  i) require cable systems to substitute a higher priority or non-distant signal broadcast by a television station for a simultaneous lower priority or distant signal when the lower priority or distant signal carries programming substantially identical to the higher priority or non-distant signal,

ii) prohibit the retransmission of a distant signal by a cable system where

  A) broadcast of the program is blacked out in the local market, or

  B) the cable system distributes a network-carried program broadcast by a local network-affiliated television station,

iii) prohibit the retransmission of certain programming content, such as abusive and obscene material, alcoholic beverages or other prohibited products, provided that these measures are applied on a non-discriminatory basis and that the program or advertisement in which the programming content appears is deleted in its entirety,

iv) prohibit the retransmission of certain programs, advertisements or announcements during an election or referendum,

v) authorize the preemption of programs at the request of a Party for urgent and important non-commercial communications,

vi) require a cable system, whose licence as of October 4, 1987 contained an invocable condition requiring the system to delete commercial materials and substitute therefore non-commercial materials, to implement such a condition; provided that with respect to those cable systems that were not implementing such licensing conditions as of that date, such conditions of licence shall be eliminated upon licence renewal, or

vii) permit non-simultaneous retransmissions in remotely-located areas where simultaneous reception and retransmission are impractical; or

b) introducing measures, including measures such as those specified in subparagraphs (a)(i) and (a)(ii)(B), to enable the local licensee of the copyrighted program to exploit fully the commercial value of its licence.

4. Immediately following implementation of the obligations in paragraph 1, the Parties shall establish a joint advisory committee comprised of government and private sector experts to review outstanding issues related to retransmission rights in both countries to make recommendations to the Parties within twelve months.

Article 2007: Print-in-Canada Requirement

Canada shall repeal section 19(5)(a)(i)(A) and (B) and section 19(5)(a)(ii)(A) and (B) of the *Income Tax Act,* which define a Canadian issue of a newspaper or a periodical for purposes of deduction from income of expenses of a taxpayer for advertising space, as one that is printed or typeset in Canada.

Article 2008: Plywood Standards

If the panel of experts referred to in the exchange of letters between the Parties of January 2, 1988 does not agree with the findings or evaluation of the Canada Mortgage and Housing Corporation (CMHC) or any successor regarding the use of C-D grade plywood in housing financed by CMHC, or if the panel has not completed its review by the date of entry into force of this Agreement, the United States may delay its tariff concessions on softwood plywood (4412.19.40 and 4412.99.40 in its Schedule in Annex 401.2) and waferboard, oriented strand board and particle-board of all species (4410.10.00), pending agreement by the Parties that the issues have been resolved satisfactorily. Should the United States of America delay implementation of these tariff concessions, Canada may delay implementation of its concessions on tariff items 4412.19.90, 4410.10.10 and 4410.10.91 in its Schedule in Annex 401.2.

Article 2009: Softwood Lumber

The Parties agree that this Agreement does not impair or prejudice the exercise of any rights or enforcement measures arising out of the Memorandum of Understanding on Softwood Lumber of December 30, 1986.

Article 2010: Monopolies

1. Subject to Article 2011, nothing in this Agreement shall prevent a Party from maintaining or designating a monopoly.

2. Prior to designating a monopoly, and where the designation may affect interests of persons of the other Party, a Party shall:

a) i) notify the other Party, and

ii) at the request of the other Party, engage in consultations prior to the designation; and

b) endeavour to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement.

3. Where a Party designates a monopoly, that Party shall ensure, whether through regulatory supervision, administrative control, or the application of other measures, that the monopoly shall not:

a) in the monopolized market, engage in discrimination in its sales against persons or goods of the other Party, contrary to the principles of this Agreement; or

b) in any other market, either directly or through its dealings with an affiliated enterprise, use its monopoly position to engage in anticompetitive practices that adversely affect a person of the other Party, whether through the discriminatory provision of the monopoly good or covered service, through cross-subsidization, or through predatory conduct.

Article 2011: Nullification and Impairment

1. If a Party considers that the application of any measure, whether or not such measure conflicts with the provisions of this Agreement, causes nullification or impairment of any benefit reasonably expected to accrue to that Party, directly or indirectly under the provisions of this Agreement, that Party may, with a view to the satisfactory resolution of the matter, invoke the consultation provisions of Article 1804 and, if it considers it appropriate, proceed to dispute settlement pursuant to Articles 1805 and 1807 or, with the consent of the Party, proceed to arbitration pursuant to Article 1806.

2. The provisions of paragraph 1 shall not apply to Chapter Nineteen and Article 2005.

Article 2012: Definitions

For purposes of this Chapter:

cultural industry means an enterprise engaged in any of the following activities:

a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing,
b) the production, distribution, sale or exhibition of film or video recordings,
c) the production, distribution, sale or exhibition of audio or video music recordings,
d) the publication, distribution, or sale of music in print or machine readable form, or
e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable television broadcasting undertakings and all satellite programming and broadcast network services;

C-D grade plywood means C-D grade plywood with exterior glue as described in U.S. Product Standard PS-1 for Construction and Industrial Plywood that is marked by a grading organization such as the American Plywood Association;

designate means to establish, designate, or authorize, or to expand the scope of a monopoly franchise to cover an additional good or covered service;

monopoly means any entity, including any consortium, that, in any relevant market in the territory of a Party, is the sole provider of a good or a covered service; and

sale includes offer for sale or distribution.

Part Eight
Final Provisions

Chapter Twenty-One: Final Provisions

In Articles 2101 and 2102, the two governments agree to exchange the necessary statistical information and to publish all necessary information to facilitate implementation and administration of the agreement. This Chapter provides for annexes and amendments and the duration and entry into force of the agreement. The agreement will remain in effect indeterminately. Due to a provision in the U.S. fast-track approval procedures, any agreement brought forward under its provisions must contain a six-month termination clause.

PART EIGHT
FINAL PROVISIONS

Chapter Twenty-One

Final Provisions

Article 2101: Statistical Requirements

All statistical requirements for the administration and enforcement of this Agreement should generally be met from data issued by Statistics Canada and the United States Department of Commerce and other United States Government agencies. The Parties shall, whenever necessary, depend upon Statistics Canada and the Department of Commerce to ensure jointly that data necessary to administer and enforce the provisions of the Agreement:

a) are collected, tabulated, analyzed and disseminated and, where appropriate, exchanged on a comparable basis; and

b) are protected according to the standards established in the laws and regulations of the supplying Party regarding confidentiality.

2. Subject to the provisions of paragraph 1, the Parties shall exchange data of a more detailed, specific or additional nature promptly upon the request of either Party.

Article 2102: Publication

1. All laws, regulations, procedures and administrative rulings of general application respecting matters covered by this Agreement shall be published promptly.

2. Each Party shall, to the extent possible, publish in advance, and allow opportunity for comment on, any law, regulation, procedure or administrative ruling of general application that it proposes to adopt respecting the matters covered by this Agreement.

Article 2103: Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

Article 2104: Amendments

1. The Parties may agree upon any modification of or addition to this Agreement.

2. When so agreed and approved in accordance with the applicable domestic legal procedures of each Party, such modifications or additions shall constitute an integral part of this Agreement.

Article 2105: Entry into Force

This Agreement shall enter into force on January 1, 1989 upon an exchange of diplomatic notes certifying the completion of necessary legal procedures by each Party.

Article 2106: Duration and Termination

This Agreement shall remain in force unless terminated by either Party upon six-month notice to the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate, in the English and French languages, each language version being equally authentic, at __________, this _____ day of _____, 198_.

EN FOI DE QUOI les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent accord.

FAIT en double exemplaire, dans les langues anglaise et française, les deux textes faisant également foi, à __________, ce _____ jour de _____, 198_.

____________________________	____________________________
FOR THE GOVERNMENT OF CANADA **POUR LE GOUVERNEMENT DU CANADA**	**FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA** **POUR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMERIQUE**

Agreed Letters

The three letters set out understandings reached between the governments during the course of the negotiations on matters that require attention before the agreement enters into force. The first letter reconfirms the understanding on a standstill between October 4, 1987 and the entry into force of the agreement on actions not in keeping with the spirit of the agreement. The second ensures that in case either government fails to implement the Harmonized System (the system by which goods are classified and upon which the tariff cuts are based) before the entry force of the Agreement, that the tariff reductions would still occur under the existing classification system. The third deals with the evaluation of American plywood standards for use in housing financed by Canada Mortgage and Housing Corporation. It links tariff reductions for plywood to the outcome of the CMHC assessment.

Ottawa, Ontario
January 2, 1988

The Honourable Clayton Yeutter
United States Trade Representative
Washington, D.C.

Dear Mr. Yeutter:

I have the honour to reconfirm the following understanding reached between the delegations of Canada and of the United States of America in the course of negotiating the Free-Trade Agreement between our two Governments signed on this day:

> "The Parties recognize that this Agreement is subject to domestic approval procedures. Accordingly, both Parties understand the need to exercise their discretion in the period prior to entry into force so as not to jeopardize the approval process or undermine the spirit and mutual benefits of the Free Trade Agreement."

I would be grateful if you would confirm that this understanding is shared by your Government.

Yours sincerely,

Pat Carney

Washington, D.C.
January 2, 1988

The Honorable Pat Carney
Minister of International Trade
Ottawa, Ontario

Dear Mrs. Carney:

I am pleased to receive your letter of today's date, which reads as follows:

> "I have the honour to reconfirm the following understanding reached between the delegations of Canada and of the United States of America in the course of negotiating the Free-Trade Agreement between our two Governments signed this day:
>
> > The Parties recognize that this Agreement is subject to domestic approval procedures. Accordingly, both Parties understand the need to exercise their discretion in the period prior to entry into force so as not to jeopardize the approval process or undermine the spirit and mutual benefits of the Free Trade Agreement."
>
> "I would be grateful if you would confirm that this understanding is shared by your Government."

I have the honor to reconfirm that the understanding referred to in your letter is shared by my Government.

Yours sincerely,

Clayton Yeutter

Washington, D.C.
January 2, 1988

The Honorable Pat Carney
Minister for International Trade
Ottawa, Ontario

Dear Mrs. Carney

I have the honor to confirm the following understanding reached between the delegations of the United States of America and of Canada in the course of negotiations regarding Article 301 (Rules of Origin) and Article 401 (Tariff Elimination) of the Free-Trade Agreement between our two Governments that was signed on this day:

> In the event it appears that either Party is unable to complete the conversion of its Tariff Schedule to the Harmonized System prior to the entry into force of the Agreement, the Parties shall enter into consultations with a view to implementing the provisions of the Agreement, subject to domestic approval, under existing Tariff Schedules on a basis that would preserve the rights and obligations set out in the Agreement.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I further have the honor to propose that this letter and your letter of confirmation in reply constitute an agreement between our two Governments, to enter into force on this day.

Yours sincerely,

Clayton Yeutter

Ottawa, Ontario
January 2, 1988

The Honourable Clayton Yeutter
United States Trade Representative
Washington, D.C.

Dear Mr. Yeutter,

I am pleased to receive your letter of today's date, which reads as follows:

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>> In the event it appears that either Party is unable to complete the conversion of its Tariff Schedule to the Harmonized System prior to the entry into force of the Agreement, the Parties shall enter into consultations with a view to implementing the provisions of the Agreement, subject to domestic approval, under existing Tariff Schedules on a basis that would preserve the rights and obligations set out in the Agreement.
>
> "I have the honor to propose that this understanding be treated as an integral part of the Agreement.
>
> "I further have the honor to propose that this letter and your letter of confirmation in reply constitute an agreement between our two Governments, to enter into force on this day."

I have the honour to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments, to enter into force on this day.

Yours sincerely,

Pat Carney

Ottawa, Ontario
January 2, 1988

The Honourable Clayton Yeutter
United States Trade Representative
Washington, D.C.

Dear Mr. Yeutter,

I have the honour to confirm the following understanding reached between the delegations of Canada and of the United States of America in the course of negotiations regarding Article 2008 of the Free-Trade Agreement between our two governments signed this day:

1. No later than March 15, 1988, the Canada Mortgage and Housing Corporation (CMHC), or its successor, shall evaluate C-D grade plywood and decide whether to approve its use in housing financed by CMHC.

2. If the CMHC grants approval for the use of C-D grade plywood in CMHC-financed housing, the Parties shall begin tariff reductions on January 1, 1989 for plywood tariff linkage categories.

3. If the CMHC does not grant approval for the use of C-D grade plywood in CMHC-financed housing, or grants approval only in part, the Parties shall not begin tariff reduction for plywood tariff linkage categories until completion of a review of the CMHC evaluation by an impartial panel of experts acceptable to both Parties.

    a. The review shall examine whether the findings in the CMHC report and its evaluation of the American Plywood Association's application for CMHC approval of C-D grade plywood are unbiased and technically accurate.

    b. If the panel agrees that the CMHC findings and evaluation are unbiased and technically accurate, the Parties shall begin tariff reductions on January 1, 1989 for plywood tariff linkage categories.

c. If the panel does not complete its review by January 1, 1989 or does not agree with the CMHC findings and evaluation, the provisions of Article 2008 shall apply.

4. For the purpose of this letter: "C-D grade plywood" shall mean C-D grade plywood with exterior glue as described in U.S. Product Standard PS-1 for Construction and Industrial Plywood, which is marked by a grading organization such as the American Plywood Association.

I have the honour to propose that this understanding be treated as an integral part of the Free-Trade Agreement.

I further have the honour to propose that this letter and your letter of confirmation in reply constitute an agreement between our two Governments, to enter into force on this day.

Yours sincerely,

Pat Carney

Washington, D.C.
January 2, 1988

The Honorable Pat Carney
Minister of International Trade
Ottawa, Ontario

Dear Mrs. Carney,

I am pleased to receive your letter of today's date, which reads as follows:

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>
> "2. If the CMHC grants approval for the use of C-D grade plywood in CMHC-financed housing, the Parties shall begin tariff reductions on January 1, 1989 for plywood tariff linkage categories.
>
> "3. If the CMHC does not grant approval for the use of C-D grade plywood in CMHC-financed housing, or grants approval only in part, the Parties shall not begin tariff reduction for plywood tariff linkage categories until completion of a review of the CMHC evaluation by an impartial panel of experts acceptable to both Parties.
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> "a. The review shall examine whether the findings in the CMHC report and its evaluation of the American Plywood Association's application for CMHC approval of C-D grade plywood are unbiased and technically accurate.

"b. If the panel agrees that the CMHC findings and evaluation are unbiased and technically accurate, the Parties shall begin tariff reductions on January 1, 1989 for plywood tariff linkage categories.

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"4. For the purpose of this letter: "C-D grade plywood" shall mean C-D grade plywood with exterior glue as described in U.S. Product Standard PS-1 for Construction and Industrial Plywood, which is marked by a grading organization such as the American Plywood Association.

"I have the honour to propose that this understanding be treated as an integral part of the Free-Trade Agreement.

"I further have the honour to propose that this letter and your letter of confirmation in reply constitute an agreement between our two Governments to enter into force on this day."

I have the honor to confirm that the understandings expressed in your letter are shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments, to enter into force on this day.

Yours sincerely,

Clayton Yeutter